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ABSTRACT

This monograph is designed to serve as a reference index to court cases dealing with minority group members who are faculty members of educational institutions. It lists important cases dealing with disputes in which faculty feel they were discriminated against by the school administration system. These cases involve sex discrimination including married and unmarried pregnancy, sex change, and discrimination based solely on gender: racial discrimination, including minority groups, integration, and required testing: discrimination against persons with handicaps: hiring practices discrimination: and violations of due process rights against minority groups. Each case is listed by a title designed to indicate the nature of the case. This is followed by a citation which includes the legal case title, decision data, case number(s), the primary source for information about the case, and the court which rendered the decision. A review of each case is included. An alphabetical list of reviewed cases and a list of additional relevant cases are appended. (Author/MK)

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MINORITY RIGHTS ACCORDING TO LAW: DISCRIMINATION CASES OF MINORITY FACULTY MEMBERS SINCE 1964

James Harvey, Ed.D.

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DEC 9 1980

This volume is dedicated

to my paternal grandmother,

Nora Sours

With all my love.

DEC 4 1980

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FOREWARD

One of the most noteworthy and controversial issues over the past two decades has been the treatment of women and minorities in the educational system of the United States. The issue has always been that of equal educational opportunity for groups of people who, because of their ethnic background or sex, have been subjectively discriminated.

A factor that was particularly interesting over the past decades dealt with overt neglect, by legislators and executives (both state and national), of minorities in education. More specifically, data exists indicating both the executive and legislative branches (in many states) were a formidable hinderance to educational equity. The substantial lack of political clout by women and minorities, of course, lies at the core of this problem. In a federal system, where interest groups heavily influence policies, individuals with little or no financial base and/or organization have little to say over their destinies.

In reviewing the struggle for educational equity in U.S. history, the role of the judiciary stands as the most critical. The judiciary (at the state and national level) has been a formidable factor mandating social and educational change. These efforts, of course, began with the Brown v. Board of Education (345 U.S. 972) decision of 1954. The impact of Brown was earthshaking. The U.S. Supreme Court let the world know the days of overt discrimination were numbered. The status of minority members (specifically Blacks) would drastically change in the decade of the 60's. The culmination of these early efforts came in the 1964 Civil Rights Amendment to the U.S. Constitution.

Since the mid-1960's, however, the public eye has turned away from the equalization struggle. Viet-Nam, inflation, the energy shortage were all

deemed more critical by the mass media. Nevertheless, many of the conditions which cause discrimination and educational inequity before 1954 still exist.

In the decade of the 70's, some particularly sensitive issues concerning minorities and women in education came before the courts. No longer did the courts deal with large numbers of school children. Instead, teachers and administrators were now in the limelight. The individual minority or female teacher now "took on" the school district and its policies. Questions of hiring and firing became the issue. Personal freedoms versus the school districts policies were tested. Additionally, teachers challenged school districts that "punished" them for pregnancies or marital preference.

The time seems ripe, then, for scholars to delve into these issues. The impact made, through the Courts, by individual minority members and female teachers is formidable. The volume herein presented is an effort to document these issues and, more importantly, give direction towards further research.

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CHAPTER I

Introduction

This monograph is designed to serve as a ready reference index of court cases dealing with minority group members who are faculty members of educational institutions. It gives a listing of all important cases dealing with disputes between faculty and administration who feel they have been discriminated against in some way by some element of the school administrative system in which they were or are employed. The main topics these cases deal with involve sex discrimination, including married and unmarried pregnancy, sex change and discrimination based solely on gender; racial discrimination, including minority groups, integration, and required testing; discrimination against persons with handicaps; hiring practices discrimination; and the violation of due process rights against minority groups.

This monograph deals with District Cases as well as Appeals Cases and also includes the three Supreme Court Cases which have bearing on the issues. Although some cases have not been included in this book, an attempt has been made to eliminate only those cases which have little or no impact on the course of the law. Several cases which were granted to the defending school systems or universities were also included if they were deemed useful to the reader in understanding what can and cannot be accepted in the current course of the law.

This monograph is not intended as a substitute for reading the court cases, but as a supplement to those cases. The intentions of the author have been to indicate where the reader should look to find the cases which interest him. More specific information on each case, as well as citings for other relevant cases, can be found in the legal citings of the case in the various law books. All the information needed to locate each case in the law books is included with each case cited here, as well as an appendix

listing all cases since 1964 which deal with any aspect of minority discrimination against faculty members of educational institutions.

The primary source for information herein contained is the Federal Reporter, 2nd series for the Appeals Cases and the Federal Supplement for the District Cases. Some of the reported cases were obtained from the United States Reports, the Employment Practices Decisions (CCH looseleaf service) and the Fair Employment Practices (BNA looseleaf service). These cases date from the Civil Rights laws of the mid-1960's, except for those which use earlier laws for basis. The cases themselves are listed in five of the six chapters included in this monograph. The majority of the cases are listed under the first two chapters since they deal with the majority of the cases resulting from minority discrimination.

This book in essence is an historical overview of the fights and struggles of minority group members to achieve equality under the law with dominant non-minority groups. This legal trail is directed toward achieving integration and equality treatment toward all persons regardless of "differences" in appearance, physical condition, or personal attitudes. Great strides have been accomplished through these efforts and a great basis has been established with these cases for future non-discriminatory action in the U. S. school systems.

Both appendixes list cases in alphabetical order according to the appellants last name. The first appendix lists all cases cited in this volume while the second appendix lists all the cases which were dealing with the subject matter but for various reasons were not included in the listing of cases. The two together give a complete listing of all cases dealing with the subject matter between the Civil Rights Amendment of 1964 and April, 1979. All cases contained herein are listed according to District and Appeals with Supreme Court cases listed last. Each section (District, Appeals, or Supreme Court) is also listed according to date.

The usefulness of such a work is seen by educators, administrators of schools, social scientists, researchers, as well as library personnel and others. Policy decisions concerning the employment of minority groups can be derived from these cases. The determination of how a specific situation should be handled according to the legal backing for that decision can be found and determined from this listing in chapter form, then with individual cases. Specific examples of how a situation was handled in the legal system should give invaluable guidelines for anyone making policy decisions where minority groups are concerned. In short, a monograph such as this will prove useful to anyone dealing with minority groups and women who must make decisions regarding educational institutions.

The most useful result of a monograph such as this is the clear and distinct patterns which evolve from the law. As the individual cases are studied a pattern of change is noted in the direction of the legal system which in time is reflected in social changes. The social changes are slower to come about, but as the law changes the society must also experience change.

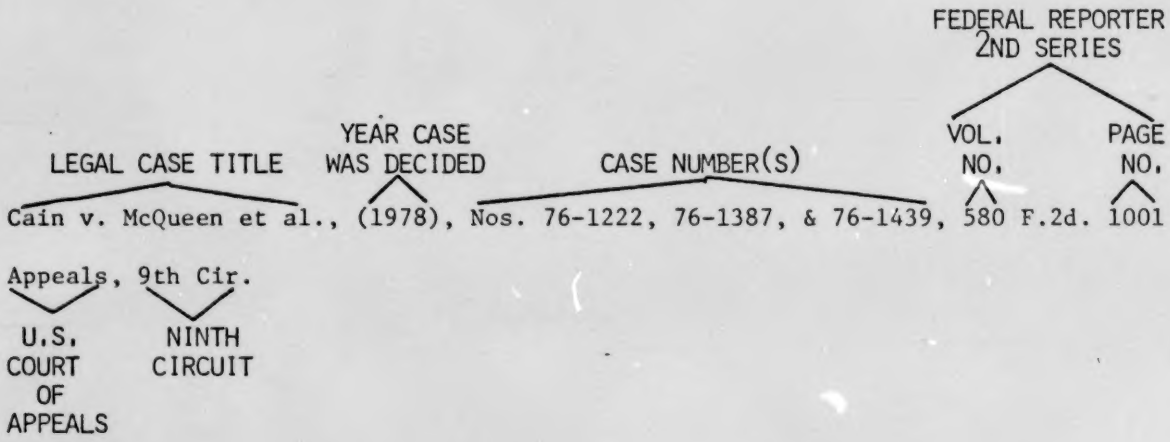
The cases reviewed in depth and those listed which are not reviewed deal with discrimination against faculty and staff employed by educational institutions who are members of minority groups or women. Since the 1964 Civil Rights Act was brought into law, the changes in the fabric of society has been noticeable. Individuals who were in the past denied equal rights now have legal recourse. As this legal recourse is exercised a greater degree of freedom is given to a larger number of persons who, prior to the Acts, would have had little.

This monograph is produced in order to give a complete listing and guide to the cases since 1964 which have influenced the practice of non-discrimination in the specific area of educational equality for minorities and women who are members of the educational families. These cases mark a stair-stepping process from the Acts themselves in 1964 up to the present. They show a gradual direction the legal

system is taking toward the reduction of discrimination in this specific field. More cases will follow these of course, however, there have been enough cases as shown in most chapters of this monograph to give the general direction of the law and how it will be interpreted by the legal system.

Method of Presenting the Cases

Each case in this volume is presented in similar form. The first item encountered for each case is a general title which is underscored. This title is designed to give the reader a slight introduction as to the nature of the case below it. After each title is a number enclosed in parentheses. This is the volume case number to enable the reader to more easily locate individual cases as listed in the various appendixes. The remainder of the introductory information on each case is explained below.


FEDERAL REPORTER 2ND SERIES
LEGAL CASE TITLE
YEAR CASE WAS DECIDED
CASE NUMBER(S)
VOL. NO.
PAGE NO.
Cain v. McQueen et al., (1978), Nos. 76-1222, 76-1387, & 76-1439, 580 F.2d. 1001
Appeals, 9th Cir.
U.S. COURT OF APPEALS
NINTH CIRCUIT

In some cases the titles are quite lengthy but will always be listed as the first item in the line of information for each case. The date will appear only as the year rather than the specific day date. In some cases there will be only one number but most often there will be several case numbers. The volume number will be used for the Federal Reporter, 2nd series and the Federal Supplement which is

the location of most of the cases used in this volume. All abbreviations used in these citations are given below:

U.S. = United States Reports

F.2d. = Federal Reporter, 2nd series

F.Supp. = Federal Supplement

EPD = Employment Practices Decisions (CCH looseleaf service)

FEP = Fair Employment Practices (BNA looseleaf service)

Cases which only cite to EPD are listed as volume number, EPD, paragraph number (P____), instead of a page number. Cases that only refer to EPD or FEP have not, at the time of this printing, been printed in the Federal Reporter series of the Federal Supplement series.

The last section given in the general information concerning individual cases lists the court which rendered the decision in the case. Only three courts were used for these decisions: United States Supreme Court, United States Courts of Appeals, and United States District Courts. A small amount of practice using the above described method to familiarize the reader with the shorthand should enable one to quickly glean a large amount of information about each case before actually getting into the description of each case.

Discrimination Defined

The term discrimination is the main basis for this volume. Black's Law Dictionary, revised fourth edition, defines discrimination in general as a failure to treat all persons equally, showing favoritism. The term has been more directly defined for law students by the courts in Thomas v. Hibbitts, D.C. Ten., 46 F.Supp. 368, 371, where it was defined with an example as differential treatment in teachers' salaries based solely on the ground of race and color.

School Board Liability

The liability of any school board concerning violations of Title VII are outlined by court decisions. They follow in sequence and give order to those who need guidelines concerning such possible violations. Claims for monetary relief from a school board that are based on a violation of Title VII of the 1964 Civil Rights Act can be made in the federal court system, even if the board is considered a part or subdivision of the state. Congress, in the production of Title VII, waived the immunity of states from prosecution in the federal courts when it extended coverage of Title VII to their employees. This covers the teachers of a school district concerning immunity; however, questions of immunity from suit on other types of claims have been resolved on the basis that school boards are entities separate from the state.

Public employer job practices are often challenged under the 1871 Civil Rights Act which prohibits persons acting under color of law from depriving other persons of federal constitutional rights. School boards, like other entities, are viewed by the United States Supreme Court as "persons" subject to suits for monetary, declaratory and injunctive relief when they deprive individuals of constitutional rights. The improper conduct need not be taken on the basis of an official decision. It is enough that it follow from a custom that appears to have official sanction. On the other hand, a school board does not become liable for the wrongful acts of an employee or official, simply because it is the employer, or stands in the superior position, of such wrongdoing individuals. (Industry Guides, Commerce Clearing House, Inc., number 1024, page 1124)

Personal Liability of School Officials

Even where a school board itself was held to be immune from suit, court action was allowed against individual board members in their official capacities. The individual board members themselves have a qualified immunity from suit to the extent that their acts were done in good faith in performance of official duties. The qualified immunity protects individual officials from paying awards of monetary damages. (Industry Guides, Commerce Clearing House, Inc., number 1024, page 1124)

CHAPTER II

Sex Discrimination

Sex discrimination has taken several different paths in recent years. Much of it has centered around the basic differences between men and women. The fact of pregnancy in the female has caused discriminatory reactions toward those who chose to produce children and remain employed in educational institutions. Most of this controversy has been centered around whether the woman who chooses to bear a child should remain in the positions she held before becoming pregnant. Many attitudes of those making policy decision guidelines for school systems have based their decisions on past concepts of "basic" differences between the roles of men and women. Apparently, they have felt that the female who produces a child should be removed from society for a period of time for unknown and mysterious reasons. However, many women have wanted not only to receive equal treatment under the law but have wanted to be able to control their private lives without being unduly hampered by individual attitudes of school administrators. These women have tried to work within the system for change in those attitudes by going to the courts to determine what is fair treatment between them and men. As the following court cases point out, they have been quite successful.

Another area of sex discrimination experienced by women concerns bearing children when the female is not married. Individual attitudes have directed the policy decisions of administrators in this area as well. Legal attitudes have been toward a separation of the individual's private and professional life. It is shown in most of the cases dealing with pregnancy outside of a legal marriage contract that what happens outside the classroom should have no bearing on what happens inside the classroom. Those who do not bring their personal lives into the classroom should not be punished because they have a different lifestyle than

the dominant society. All persons should be protected under the law from having attitudes forced upon them from those who set themselves up as unofficial judges. It is shown in the following cases that a teacher's abilities in the classroom are complex and derived from many sources. Incidents in their private lives, where they do not directly interfere with the instruction in the classroom, have little, if any, bearing on their teaching abilities.

Also included in this section is a case dealing with the changing concepts of what is female and what is male. Just how should such designations be determined? This also deals with individual attitudes of administrators who tend to be conservative in their policy decisions due to pressures, real or imagined, from those who support the school systems they operate.

The last part of this section deals with discrimination against persons simply because of their gender. These cases most often deal with discrimination against women who were passed over for promotion, discharged, given unequal working conditions, or refused tenure based only on the fact that they were female instead of male.

Some cases cited here were not won by the plaintiff, but were important in determining legal boundaries for future use. The reader may find these cases as useful as those where the plaintiff won since they will show what may not be acceptable under the law as well as what is.

The following are case statements specific to pregnancy.

Civil Rights Act of 1871 (1)

A federal district court properly determined that a regulation of a public school board providing that maternity leave for pregnant teachers begin no later than the end of the fifth month of pregnancy was discriminatory within the proscription of the equal protection clause of the Fourteenth Amendment to the

federal Constitution. There was neither medical reason nor administrative justification for the regulation and there was no valid basis to treat maternity leave any differently from leave for other medical disabilities. The failure to treat pregnancy like other medical conditions amounted to discrimination without rational basis in violation of the equal protection clause. The school board's argument that the regulation did not discriminate against women as such, but only discriminates between pregnant teachers and other teachers lacked merit.

42 U.S.C. Sec. 1983.

Title VII--Civil Rights Act (2)

A public school system which maintains separate maternity and sick leave policies, requiring a four-month unpaid maternity leave for pregnant employees without credit towards seniority, tenure or without use of accumulated sick leave time, was guilty of unlawful sex discrimination. Treating pregnancy differently from other temporary disabilities is discriminatory within the meaning of Title VII and the EEOC guidelines.

42 U.S.C. Sec. 2000e.

U.S. Constitution and Civil Rights Act of 1964 (3)

School district is not violating either Title VII or Fourteenth Amendment to U.S. Constitution by its written maternity leave policy that (1) entitles employees to maternity leave without pay after one year of service, (2) gives credit for continuous employment and guarantees reinstatement to same position or one of equal status and pay, if possible, (3) allows temporary appointments in position involved, and permanent replacement with approval of board of trustees and notice to employee on leave, and (4) permits use of accumulated annual or sick leave not taken, but denies credit for leave and pay benefits during period of maternity leave, where policy treats pregnancy far more liberally than it does other temporary disabilities, and there is no clear indication of the existence of contrary unwritten policy. (Pennington v. Lexington School District 2, et. al., No. 75-115, February 25, 1976; Order April 26, 1976.

Married Pregnancy

Pregnancy Leave Requirement Upheld (4)

Jo Carol LaFleur v. Cleveland Board of Education et al. Ann Elizabeth Nelson v. Cleveland Board of Education et al. (1971) Civ. A. Nos. C 71-292, C 71-333. 326 F.Supp. 1208, United States District Court, N. D. Ohio, E. D.

An action was taken by public school teachers seeking injunction against the enforcement of a school board regulation prohibiting teachers who become pregnant from teaching their classes past the fourth month of pregnancy. The District Court held that the school board regulation providing that a leave of absence of pregnant school teacher shall be effective not less than five months before the expected date of the normal birth of the child and requiring that application for such leave be made two weeks before the effective date of the leave was reasonable as a measure to minimize the sudden disruption of the students' classroom program due to unforeseen complications in the teacher's condition and to allow time for a substitute teacher to work and train with the intended class and did not unconstitutionally discriminate against women whose condition was attendant to their sex.

Judgment for defendant.

Mandatory Leave of Absence After Fifth Month of Pregnancy (5)

Mrs. Susan Cohen v. Chesterfield County School Board and Dr. Robert F. Kelly. (1971) Civ. A. No. 678-70-R. 326 F.Supp. 1159, United States District Court, E. D. Virginia, Richmond Division.

A civil rights action was taken by a teacher to determine the validity of a school regulation. The District Court held that the school board regulation requiring women teachers to take leave of absence at the end of their fifth month of pregnancy was not shown to have had any rational basis and as such was discriminatory as applied to woman teachers and denied equal protection of the laws.

Order accordingly.

Required Leave of Absence for Pregnancy Upheld (6)

Priscilla B. Green v. Waterford Board of Education et al. (1972) Civ. No. 14722. 349 F.Supp. 687, United States District Court, D. Connecticut.

A suit was brought by a woman teacher challenging the validity of an order of the town school board requiring that she take a leave of absence from her job when she reached the sixth month of her pregnancy, in which the school board and other defendants moved to dismiss for lack of federal jurisdiction. The District Court held that where a complaint alleges deprivation of a constitutional right by a person acting under the color of state law, it has sufficiently stated a cause of action under the statute establishing civil action for deprivation of rights. The Court further held that the teaching contract provision requiring an expectant mother to apply for and accept a leave of absence to begin not less than four months prior to her expected confinement was not arbitrary, capricious or invidious and was not so lacking in rational basis as to constitute a denial of equal protection.

Complaint dismissed on the merits.

Maternity Leave Policies - Injury to Class (7)

Susan A. Bravo, suing on behalf of herself individually and all others similarly situated, v. Board of Education of the City of Chicago. (1972) No.72 C 970. 345 F.Supp. 155, United States District Court, N. D. Illinois, E. D.

A civil rights action was taken by a pregnant teacher against the school board. On the teacher's motion for preliminary injunction, the District Court held that the pregnant school teacher sufficiently sustained the burden of showing, (1) a reasonable likelihood of success in attacking the school board's maternity leave policies on equal protection grounds, (2) that she and her class would suffer irreparable injury if the preliminary injunction was not granted, and (3) that the

balance of hardships and conveniences weighed in favor of the plaintiffs to warrant the grant of a preliminary injunction.

Order accordingly.

Sick Leave Pay Not Required in Pregnancy Leave (8)

Margo Seaman, on behalf of herself and all others similarly situated, v. Spring Lake Park Independent School District No. 16 et al. (1974) No. 4-73-Civ. 23. 387 F.Supp. 1168,[3]United States District Court, D. Minnesota, Fourth Division.

A school teacher, who had obtained a preliminary injunction preventing the school district, its superintendent and members of the school board from placing her on a semester long maternity leave of absence, filed motions for attorneys' fees incurred in the litigation and for declaratory judgment that in effect would make her eligible for sick leave pay for the period when she was absent and physically disabled. The District Court held that (1) the school district was not subject to liability under the Civil Rights Act; (2) that the superintendent and individual members of the board of education were subject to the Civil Rights Act; (3) that the school teacher was not entitled to recover attorneys' fees on grounds of bad faith or obstinate behavior by the defendants, under "common fund" theory or on theory that teacher had acted as a "private attorney general"; and (4) that the denial of sick leave pay, pursuant to collective bargaining agreement providing that maternity leave "shall be leave without pay", did not deny equal protection.

Motions denied.

Mandatory Maternity Leave Policy (9)

Anne Farris, v. Board of Education of the City of St. Louis. (1976) No. 75-230C(1). 417 F. Supp. 202, United States District Court, E. D. Missouri, E. D.

A school teacher brought action against the board of education under Title VII of the Civil Rights Act of 1964, alleging sexual discrimination in employment by

reason of the defendant's mandatory maternity leave policy. The matter was submitted on stipulation of facts. Upon cross motions for summary judgment, the District Court held that (1) the defendant was in violation of Title VII by continuing to give present effect to its past act of discrimination against the plaintiff, and (2) that an award of back pay not to antedate the filing of the plaintiff's complaint with the Equal Employment Opportunity Commission was appropriate and necessary to make the plaintiff whole.

Judgment for plaintiff.

Pre-1972 Mandatory Maternity Leave Policy (10)

Anne Farris v. Board of Education of the City of St. Louis. (1978) Nos. 76-1633, 76-1649, 576 F.2d 764, Appeals, 8th Cir.

A schoolteacher brought action against the Board of Education of the City of St. Louis under Title VII of the Civil Rights Act of 1964, alleging sex discrimination in employment by reason of the board's pre-1972 mandatory maternity leave policy. The U.S. District Court for the Eastern District of Missouri held that the board was in violation of Title VII by reason of the continuing effect of its past act of discrimination. On appeal, the Court of Appeals held that even though the continuing present effect of the board of education's pre-1972 mandatory maternity leave policy was to keep the schoolteacher one step behind in salary schedule, the schoolteacher was not entitled to relief under Title VII of the Civil Rights Act of 1964 since the board of education was not within constraints of Title VII at the time of the act of discrimination and the schoolteacher was not subjected to any act of discrimination since 1972.

Reversed.

Mandatory Maternity Leave Policy - Sick Leave Benefits (11)

Karen deLaurier, v. The San Diego Unified School District and Lester G. Warrenbrock. (1978) No. 75-2096, 588 F.2d 674, Appeals, 9th Cir.

A school teacher brought suit against a school district, complaining of the district's policy requiring that she go on leave at the beginning of her ninth month of pregnancy and prohibiting her from using accumulated sick leave benefits during such leave of absence. The U. S. District Court for the Southern District of California entered judgment in the district's favor, and the teacher appealed. The Court of Appeals held that the trial court was correct in ruling the mandatory maternity leave policy valid, but that remand was necessary on the issue of sick leave benefits.

Affirmed in part, vacated and remanded in part, reversed and remanded in part.

U. S. Supreme Court Case Required Unpaid Maternity Leave (12)

Cleveland Board of Education et al. v. LaFleur et al. Certiorari to the United States Court of Appeals for the Sixth Circuit. (1974) No. 72-777, 414 U.S. 632.

Pregnant public school teachers brought these actions under 42 U. S. C. 1983 challenging the constitutionality of mandatory maternity leave rules of the Cleveland, Ohio (No. 72-777), and Chesterfield County, Virginia (No. 72-1129), School Boards. The Cleveland rule requires a pregnant school teacher to take unpaid maternity leave five months before the expected childbirth, with leave application to be made at least two weeks before her departure. Eligibility to return to work is not accorded until the next regular semester after her child is three months old. The Chesterfield County rule requires the teacher to leave work at least four months, and to give notice at least six months, before the anticipated childbirth. Re-employment is guaranteed no later than the first day of the school year after the date she is declared re-eligible. Both schemes require a physician's certificate of physical fitness prior to the teacher's return. Each Court of Appeals reversed the court below, one holding the Chesterfield County maternity leave rule constitutional, the other holding the Cleveland rule unconstitutional. Held:

1. The mandatory termination provisions of both maternity rules violate the Due Process Clause of the Fourteenth Amendment. Pp. 639-648.

(a) The artibrary cutoff dates (which obviously come at different times of the school year for different teachers) have no valid relationship to the State's interest in preserving continuity of instruction, as long as the teacher is required to give substantial advance notice that she is pregnant. Pp. 639-643.

(b) The challenged provisions are violative of due process since they create a conclusive presumption that every teacher who is four or five months pregnant is physically incapable of continuing her duties, whereas any such teacher's ability to continue past a fixed pregnancy period is an individual matter; and the school boards' administrative convenience alone cannot suffice to validate the arbitrary rules. Pp. 643-648.

2. The Cleveland three-month return provision also violates due process, being both arbitrary and irrational. It creates an irrebuttable presumption that the mother (whose good health must be medically certified) is not fit to resume work, and it is not germane to maintaining continuity of instruction, as the precise point a child will reach the relevant age will occur at a different time throughout the school year for each teacher. Pp. 648-650.

3. The Chesterfield County return rule, which is free of any unnecessary presumption, comports with due process requirements. P. 650.

No. 72-777, 465 F.2d 1184, affirmed; No. 72-1129, 474 F.2d 395, reversed and remanded.

U. S. Supreme Court Case Pregnant Employees and Unpaid Leave (13)

Monell et al. v. Department of Social Services of the City of New York et al. Certiorari to the United States Court of Appeals for the Second Circuit. (1978) No. 75-1914, 436 U.S. 658.

Petitioners, female employees of the Department of Social Services and the Board of Education of the City of New York, brought this class action against the Department and its Commissioner, the Board and its Chancellor, and the city of New York and its Mayor under 42 U. S. C. 1983, which provides that every "person" who, under color of any statute, ordinance, regulation, custom, or usage of any State subjects, or "causes to be subjected," any person to the deprivation of any federally protected rights, privileges, or immunities shall be civilly liable to the injured party. In each case, the individual defendants were sued solely in their official capacities. The gravamen of the complaint was that the Board and the Department had as a matter of official policy compelled pregnant employees to take unpaid leaves of absence before such leaves were required for medical reasons. Cf. Cleveland Board of Education v. LaFleur, 414 U. S. 632. The District Court found that petitioners' constitutional rights had been violated, but held that petitioners' claims for injunctive relief were mooted by a supervening change in the official maternity leave policy. That court further held that Monroe v. Pape, 365 U. S. 167, barred recovery of backpay from the Department, the Board, and the city. In addition, to avoid circumvention of the immunity conferred by Monroe, the District Court held that natural persons sued in their official capacities as officers of a local government also enjoy the immunity conferred on local governments by that decision. The Court of Appeals affirmed on a similar theory. Held:

1. In Monroe v. Pape, supra, after examining the legislative history of the Civil Rights Act of 1871, now codified as 42 U. S. C. 1983, and particularly the rejection of the so-called Sherman amendment, the Court held that the Congress in 1871 doubted its constitutional authority to impose civil liability on municipalities and therefore could not have intended to include municipal bodies within the class of "persons" subject to the Act. Re-examination of this legislative history compels the conclusion that Congress in 1871 would not have thought 1983 constitutionally infirm if it applied to local governments. In addition, that history

confirms that local governments were intended to be included among the "persons" to which 1983 applies. Accordingly, Monroe v. Pape is overruled insofar as it holds that local governments are wholly immune from suit under 1983. Pp. 664-689.

2. Local governing bodies (and local officials sued in their official capacities) can, therefore, be sued directly under 1983 for monetary, declaratory, and injunctive relief in those situations where, as here, the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted or promulgated by those whose edicts or acts may fairly be said to represent official policy. In addition, local governments, like every other 1983 "person," may be sued for constitutional deprivations visited pursuant to governmental "custom" even though such custom has not received formal approval through the government's official decision-making channels. Pp. 690-691.

3. On the other hand, the language and legislative history of 1983 compel the conclusion that Congress did not intend a local government to be held liable solely because it employs a tortfeasor--in other words, a local government cannot be held liable under 1983 on a respondeat superior theory. Pp. 691-695.

4. Considerations of stare decisis do not counsel against overruling Monroe v. Pape insofar as it is inconsistent with this opinion. Pp. 695-701.

(a) Monroe v. Pape departed from prior practice insofar as it completely immunized municipalities from suit under 1983. Moreover, since the reasoning of Monroe does not allow a distinction to be drawn between municipalities and school boards, this Court's many cases holding school boards liable in 1983 actions are inconsistent with Monroe, especially as the principle of that case was extended to suits for injunctive relief in City of Kenosha v. Bruno, 412 U. S. 507. Pp. 695-696.

(b) Similarly, extending absolute immunity to school boards would be inconsistent with several instances in which Congress has refused to immunize school boards from federal jurisdiction under 1983. Pp. 696-699.

(c) In addition, municipalities cannot have arranged their affairs on an assumption that they can violate constitutional rights for an indefinite period; accordingly, municipalities have no reliance interest that would support an absolute immunity. Pp. 699-700.

(d) Finally, it appears beyond doubt from the legislative history of the Civil Rights Act of 1871 that Monroe misapprehended the meaning of the Act. Were 1983 unconstitutional as to local governments, it would have been equally unconstitutional as to state or local officers, yet the 1871 Congress clearly intended 1983 to apply to such officers and all agreed that such officers could constitutionally be subjected to liability under 1983. The Act also unquestionably was intended to provide a remedy, to be broadly construed, against all forms of official violation of federally protected rights. Therefore, without a clear statement in the legislative history, which is not present, there is no justification for excluding municipalities from the "persons" covered by 1983. Pp. 700-701.

5. Local governments sued under 1983 cannot be entitled to an absolute immunity, lest today's decision "be drained of meaning," Scheuer v. Rhodes, 416 U. S. 232, 248. P. 701. 532 F.2d 259, reversed.

Requested Maternity Leave

Sick Leave for Childbirth-Caused Incapacity Denied (14)

Barbara R. Hutchison, v. Lake Oswego School District (1974) No. 7 et al. Civ. No. 73-339. 374 F.Supp. 1056, United States District Court, D. Oregon.

An action by a school teacher for declaratory judgment and damages for failure of the school board to permit the teacher to apply for accumulated sick leave for childbirth-caused incapacity. The District Court held that, (1) policies and procedures of the school district by which the teacher was refused permission to apply accumulated sick leave to childbirth-caused incapacity violated the teacher's rights under the equal protection clause since, in determining sick-leave benefits, making a distinction between childbirth-caused incapacity was arbitrary and irrational, such distinction served no legitimate interest, and (2) it penalized the female teacher for asserting her right to bear children.

Judgment accordingly.

Child Care Leave by Male (15)

Gary Ackerman and Rita Ackerman, v. The Board of Education of the City of New York et al. (1974) No. 71 Civ. 5106. 387 F.Supp. 76, United States District Court, S. D. New York.

A public school teacher and his wife brought action against the board of education and agents of the board for alleged discrimination on basis of sex in its policy of granting child care leave. The District Court held that where the teacher took leave on his own volition when he was denied leave under the board of education bylaws granting female teachers child care leave and did not apply to teach as a substitute because of the belief that he was not in good standing with the board, the teacher was not entitled to a "back pay" award for what he would have earned had he been granted leave pursuant to bylaws and thus been permitted to work as a substitute teacher on a per diem basis; and as amendment of the board's

bylaws to eliminate the alleged discrimination was prompted by an amendment to equal employment opportunity law rather than by EEOC "determination" that the board's policy discriminated against male teachers or by plaintiffs' suit, plaintiffs were not the "prevailing parties" and were not entitled to attorney fees.

Judgment for defendants.

See also, D.D., 322 F.Supp. 274.

Sick Leave Benefits Denied for Maternity (16)

Janice Tawney, v. The Board of Education of the County of Boone, a corporation. (1977) Civ. A. No. 74-446-CH. 426 F.Supp. 528, United States District Court, S. D. West Virginia, Charleston Division.

An action was instituted on complaint alleging that by denying a female teacher sick leave benefits, the school board was guilty of sex discrimination. On motion of the defendant for judgment on the pleadings, the District Court held that the conduct of the school board in denying the female teacher's claim for sick leave benefits while absent from her employment due to normal pregnancy and child birth on ground that giving birth and recovery therefrom was not a sickness within the meaning of the applicable West Virginia statute was not violative of any rights secured to the teacher by either equal employment provision of the Civil Rights Act or the equal protection clause of the Fourteenth Amendment.

Motion granted.

Sick Leave Benefits Denied for Normal Pregnancy (17)

Barbara R. Hutchison, v. Lake Oswego School District No. 7 et al. (1975), Nos. 74-3181, 74-3182, 519 F.2d 960, Appeals, 9th Cir.

An action was brought by a female schoolteacher for declaratory judgment and for damages for failure of the school board to grant sick leave benefits for

normal pregnancy. The U. S. District Court for the District of Oregon entered a judgment in favor of the teacher and the school district board and its individual members appealed and the teacher appealed from the school district's dismissal on Eleventh Amendment grounds. The Court of Appeals held that the school district policy denying sick leave benefits for normal pregnancy did not violate equal protection but was violative of the Civil Rights Act, that the Eleventh Amendment did not bar suit against the Oregon school district whose financing largely came from local sources and that the school board members were entitled to qualified good-faith immunity from liability for damages.

Affirmed in part and reversed in part.

Mandatory Dischanrge Because of Pregnancy

Mandatory Resignation of Pregnant Female Employees (18)

Carol Heath, v. Westerville Board of Education et al., (1972), Civ. No. 71-379. 345 F.Supp. 501, United States District Court, S. D. Ohio, E. D.

An action wherein a female teacher challenged the constitutionality of a regulation adopted by the school board regarding employment status of pregnant, female employees. The District Court held, inter alia, that the regulations of the school board requiring mandatory resignation of pregnant female employees after their fifth month of pregnancy and requiring female employees to wait one year following delivery before being eligible for reemployment, absent evidence that regulations were either medically, psychologically or administratively justified, were violative of equal protection in that they treated pregnancy differently from other medical disabilities.

Judgment for plaintiff.

Mandatory Discharge Because of Pregnancy (19)

Sharon Demkowicz, v. Joseph Endry et al., (1975), Civ. A. No. 73-406. 411 F.Supp. 1184, United States District Court, S. D. Ohio, E. D.

A civil rights action was instituted by the plaintiff for injunctive relief directing defendants to reinstate her as a public school teacher and for an award of back pay. The District Court held that (1) the school board policy which required a pregnant teacher with less than three years experience in the school system to submit her resignation or be terminated and which afforded no priority upon application for reemployment was violative of the Fourteenth Amendment as creating an irrebuttable presumption of physical incompetence and as acting to penalize a pregnant teacher for deciding to bear a child; (2) it was also held that the plaintiff was entitled to reinstatement; (3) that individual school administrators were not liable for an award of back pay to plaintiff where it was clear that they acted reasonable and in good faith in maintaining and enforcing

the policy; (4) that the school district was liable for an award of back pay; (5) that the plaintiff was not barred from recovery by doctrine of laches or by a failure to mitigate her damages; (6) that class action seeking reinstatement, with back pay, for certain unconstitutionally terminated public school teachers was improper where the challenged policy was not applied in the same manner in each individual case.

Judgment for plaintiff.

Terminated for Refusal to Comply with Maternity Policy (20)

Inez B. Somers v. Aldine Independent School District, (1979), Civ. A. No. 75-H-2106. 464 F.Supp. 900, United States District Court, S. D. Texas, Houston Division.

The plaintiff sought injunctive relief and damages pursuant to the Civil Rights Act for alleged discriminatory actions of her former employer, an independent school district. The District Court held that: (1) the pregnant teacher was discriminated against on basis of sex, when she was terminated because she refused to comply with the school district's maternity policy requiring pregnant employees to either take mandatory leave of absence or be terminated following third month of pregnancy, and (2) where the teacher both before and after being terminated had worked as an evening cashier, the amount she earned as cashier would not be subtracted from the amount she would have earned as a teacher had she not been discharged.

Judgment for plaintiff.

Resignation Required for Pregnancy (21)

Barbara Lee Shirley v. Chagrin Falls Exempted Village Schools Board of Education et al., (1975), No. 75-1180, 521 F.2d 1329, Appeals, 6th Cir.

A teacher whose resignation was required as of the end of a semester prior to the end of the fifth month of pregnancy sued the school board members for

back pay and attorney's fees. Damages were awarded by the U. S. District Court for the Northern District of Ohio and the school board members appealed. The Court of Appeals held that where at the time the school board decision was made there had in fact been no adjudication binding on the board that its existing pregnancy policy was unconstitutional, the board members would not be compelled to respond personally in damages.

Reversed and remanded for entry of judgment for board members.

Required Leave of Absence

Leave of Absence Required for Pregnancy (22)

Priscilla B. Green v. Waterford Board of Education et al., (1973), No. 213, Docket 72-1676, 473 F.2d 629, Appeals, 2nd Cir.

A civil rights action wherein a woman teacher challenged the validity of an order of the town school board requiring that she take a leave of absence from her job when she reached six months of her pregnancy. The U. S. District Court for the District of Connecticut dismissed the complaint on the merits, and the plaintiff appealed. The Court of Appeals held that the rule promulgated by the school board requiring a maternity leave without pay to begin not less than four months prior to expected confinement or at such time as a replacement became available arbitrarily forced a physically capable woman to leave her job before being required to do so for medical reasons and was discriminatory, and state interests, namely, concern for health and safety of teacher and unborn child, continuity of education, and administrative convenience, were not sufficiently promoted by the rule to justify discrimination, though the board was not prevented from considering the question of leave for pregnant teachers on an individual basis as it apparently did for nonpregnant teachers, male and female, faced with various medical problems.

Reversed and remanded.

Maternity Leave Required (23)

Susan Cohen v. Chesterfield County School Board and Dr. Robert F. Kelly, (1973), No. 71-1707, 394 F.2d 395, Appeals, 4th Cir.

A civil rights action by a female teacher challenging the maternity leave regulation of the county school board on grounds it deprived her of her rights to due process and to equal protection of the laws guaranteed under the Fourteenth Amendment. The United States District Court for the Eastern District

of Virginia held that such regulation deprived the plaintiff of equal protection, and the county school board and another appealed. The Court of Appeals held that the school board regulation requiring, with limited flexibility, that teachers who become pregnant must go on maternity leave at the end of the fifth month of pregnancy did not apply to women in an area in which they might compete with men and thus did not constitute in invidious discrimination based upon sex.

Reversed.

Current Unmarried Pregnancy

Single Mothers (24)

Katie Mae Andrews and Lestine Rogers v. Drew Municipal Separate School District et al., (1975), No. 73-3177, 507 F.2d 610, Appeals, 5th Cir.

Two unwed mothers brought an action under federal civil rights statutes to have declared unconstitutional a rule of a school district under which unwed parents were ineligible to be hired as teachers' aides. The U. S. District Court for the Northern District of Mississippi declared the rule unconstitutional but refused to award plaintiffs attorneys' fees, and cross appeals were filed. The Court of Appeals held that the rule had no rational relation to the objectives ostensibly sought to be achieved by school officials and that it was fraught with invidious discrimination and thus constitutionally defective both as a denial of equal protection and of due process.

Affirmed.

Single Female Pregnancy (25)

Barbara Jean Brown v. Robert Bathke, as Principal of Monroe Junior High School, et al., (1977), No. 76-2073, 588 F.2d 566, Appeals, 8th Cir.

A former high school teacher brought action against officials to redress termination of her teaching contract after the officials discovered that, although single, she had become pregnant. The U. S. District Court for the District of Nebraska denied plaintiff relief, and she appealed. The Court of Appeals, held inter alia, that the teacher's right to due process was not protected by a posttermination hearing conducted some two years after the termination.

Judgment reversed and vacated.

Previous Illegitimate Child (26)

Katie Mae Andrews and Lestine Rogers, v. The Drew Municipal Separate School District et al., (1973), No. GC 73-20-K. 371 F. Supp. 27, United States District Court, N. D. Mississippi, Greenville Division.

A civil rights action was brought against the school district, its trustees and superintendent, seeking declaratory and injunctive relief to redress alleged deprivation of rights and privileges guaranteed by the Fourteenth Amendment. The District Court held that the policy of barring an otherwise qualified person from being employed, or considered for employment, in public schools merely because of the person's previously having had an illegitimate child had no rational relation to objectives ostensibly sought to be achieved by school officials and was constitutionally defective as denying equal protection, violating due process and constituting impermissible discriminatory classification based upon sex, and that discharge of one teacher's aide and refusal to employ an applicant for the same position, without any inquiry into their good moral character, but solely because they were unwed mothers was improper.

Judgment for plaintiffs.

Unmarried Pregnancy - Transfer (27)

Harriet Wardlaw, v. Austin Independent School District, et al. United States District Court, Western District of Texas, Austin Division, No. A-75-CA-17, EPD 10,222 (1975).

The transfer of a female public school teacher to non-teaching duties was due to her pregnancy and unmarried status. The court ruled such a transfer was not unlawful sex discrimination since male teachers were treated the same concerning fathering a child out of wedlock. Such a transfer did not violate the teacher's constitutional rights of privacy, procreation or her decision whether or not to

marry. The decision concerning which class she would teach was an administrative one and not the teacher's right. The decision to move the teacher from that class was based on legitimate educational concerns, including the fact that the class the teacher was in charge of was a special education class where students were especially vulnerable to social tensions. U. S. Constitution, First, Fifth, Ninth, and Fourteenth Amendments; 42 U.S.C. Secs. 1981 and 2000e; Tex.Rev.Civ. Stat.Ann.art. 6252-16.

Sex Reassignment - Discharged (28)

Paula Grossman v. Bernards Township Board of Education, (1975), No. 74-1904, EPD 10,686, United States District Court, District of New Jersey.

Sex discrimination was claimed by a public schoolteacher who was discharged following a sex reassignment operation. Dismissal was due to the failure of the teacher to state a valid claim under Title VII of the 1964 Civil Rights Act. The prohibitions of sex discrimination of Title VII apply to prohibit discriminatory treatment based on stereotypical concepts of the sexes, conditions common to one sex, or status otherwise related to one sex. Transsexuals are not covered under the Act with respect to employment practices based on a change in gender rather than their status as a member of one sex. 42 U.S.C. Sec. 2000e.

Discrimination Based Solely on Gender (29)

Phyllis Rackin v. The University of Pennsylvania et al., (1974), Civ. A. No. 73-1007., 386 F.Supp. 992, United States District Court, E. D. Pennsylvania.

An action by woman professor at the University of Pennsylvania, a state-aided institution, against the university, its various officers and certain tenured members of the University's English department, for redress of alleged discrimination against her in the terms and conditions of her employment solely on the basis of her sex. On the defendants' motion to dismiss, the District Court held that (1) although individually each of the factors composing the Commonwealth-University relationship might not be sufficient to establish "state-action", (2) that the complaint was sufficient to state cause of action; (3) that the plaintiff had a cause of action under the Civil Rights Act of 1964 even though she was denied promotion and tenure well before the effective date of amendment which prohibited sexual discrimination in employment in an educational institution; (4) that material issues of fact as to whether the Equal Pay Act was violated or whether her job was subject to the exceptions for payment differentials based upon merit and quality of work product precluded summary judgment; (5) that executive orders, which require every institution which contracts with the federal government to take affirmative action to insure that there is no discrimination in employment, were not enforceable by a private cause of action; and (6) that particular civil rights statute does not apply to sex discrimination claims.

Order in accordance with opinion.

Transferred Because of Female Status (30)

Diane Meier v. Evansville-Vanderburgh School Corporation, (1975), No. EV 74-76-C. 416 F. Supp. 748, United States District Court, S. D. Indiana, Evansville Division.

A suit was instituted for alleged sex discrimination in employment. On motion of the defendant to dismiss the District Court held that the decision of the teacher to permit her employer to decide who in the marriage relationship would be transferred to another school pursuant to employer's policy prohibiting a husband and wife from teaching in the same school operated to preclude recovery on a claim of sex discrimination under equal employment provisions of Civil Rights Act in absence of evidence that transfer resulted solely from plaintiff's status as the female in a marriage relationship.

Motion granted.

Unequal Working Conditions (31)

Jeanne Harrington, v. Vandalia-Butler Board of Education, (1976), Civ. No. C-3-74-73. 418 F.Supp. 603, United States District Court, S. D. Ohio, W. D.

A female teacher of girls physical education brought a civil rights action against the local school board. The District Court held that (1) female teacher whose working conditions were inferior to those of the male teachers performing the same services and who was handicapped by unsatisfactory working conditions and inadequate equipment was entitled to recover under Title VII of the Civil Rights Act; and (2) that the teacher was entitled to recover damages of $6,000 and reasonable attorney fees of $2,000.

Order accordingly.

Male Employee Wanted (32)

United States of America v. Wattsburg Area School District and William J. Gregg, Supt., (1977), Civ. A. No. 76-101. 429 F. Supp. 1370, United States District Court, W. D. Pennsylvania.

The United States brought action against the school district and the school superintendent alleging sex discrimination in the defendants' refusal to hire a

woman teacher. The District Court held that, (1) where the administrators of the school district had already decided to hire a male for the teaching position when they interviewed the female applicant, (2) the female applicant's educational qualifications were superior to the male's, (3) female applicant had two and one-half years of teaching experience in the school district and had received nothing but favorable evaluations during that time, and (4) male sex was considered a qualification of the job by assistant superintendent, hiring of male applicant in place of female applicant constituted a discrimination in hiring based upon sex, and school district would be directed to pay the female applicant such back pay as she was legally entitled to as a result of unlawful employment practices engaged in by the district.

Order accordingly.

Discrimination Under Equal Pay Act (33)

Jacquelyn Katz, v. School District of Clayton, Missouri, a Public School Corporation, (1977), No. 76-1495, 557 F.2d 153, United States Court of Appeals, Eighth Circuit.

A woman hired as an assistant teacher sued for monetary damages under the Equal Pay Act. The United States District Court for the Eastern District of Missouri rendered judgment for the defendant, and the plaintiff appealed. The Court of Appeals held that: (1) two employees are performing equal work when it is necessary to expend the same degree of skill, effort and responsibility in order to perform substantially equal duties which they do, in fact, routinely perform with the knowledge and acquiescence of the employer, even though the employer has not formally specified that the two employees are to perform the same duties; (2) the female assistant teacher who was being paid less than male teachers failed to establish prima facie case under the Equal Pay Act with respect to the 1973-74 school year where, during that year, she often performed clerical duties and did not spend a majority of her time in teaching duties;

but (3) with respect to 1974-75 school year, where the plaintiff was assigned full-time teaching duties by alternative school staff and district administrators were aware that the plaintiff was performing those duties, yet she still received less pay than the male teachers, she sustained her burden of proof.

Affirmed in part, reversed in part, and remanded.

Religious College Not Bound by Civil Rights Act (34)

Equal Employment Opportunity Commission, v. Mississippi College, (1978), Civ. A. No. J78-0113(C). 451 F.Supp. 564, United States District Court, S. D. Mississippi, Jackson Division.

A professor sued college, owned, controlled and operated by a religious institution, under the equal employment opportunity provisions of Civil Rights Act alleging that she was not employed by college because she was a female. In proceeding to enforce subpoena duces tecum ad testificandum, the District Court held that because of exemptions granted under the Civil Rights Act to religious institutions, plaintiff had no authority even to seek evidence to establish facts of alleged discrimination based on sex.

Judgment for defendant.

Denial of Position Solely on Basis of Sex (35)

Patricia M. Reilly, on behalf of herself and all persons similarly situated, v. Board of Education, Common School District 14, New Berlin, Wisconsin and Virgil M. Staples, Superintendent of Public Schools, New Berlin, Wisconsin, (1978), No. 75-C-311. 458 F.Supp. 992, United States District Court, E. D. Wisconsin.

An unsuccessful female applicant for the position of district music coordinator for the city school district brought action against the school district and its superintendent, alleging that she was denied the position solely on the basis of sex. The District Court held that: (1) the evidence established that the

female applicant was qualified for the job opening; (2) the female applicant was not required to prove discriminatory intent; (3) the evidence established a prima facie case of unlawful sex discrimination; (4) though length of service with a school system might be an important factor in assigning job positions, the school district's claim that a male applicant was selected because of his length of service in the district was, under all the circumstances, unpersuasive, and (5) the school district did not articulate a valid, nondiscriminatory reason for not selecting the female applicant.

Judgment for plaintiff.

Sex-Based (Female) Employment Discrimination (36)

Jeanne Harrington, v. Vandalia-Butler Board of Education, (1978), No. 76-2646, 585 F.2d 192, Appeals, 6th Cir.

A female former physical education teacher at a junior high school brought action seeking recovery for alleged sex-based employment discrimination. The U. S. District Court for the Southern District of Ohio entered judgment awarding compensatory damages and attorney fees, and the board of education appealed. The Court of Appeals held that: (1) although the plaintiff had been discriminated against in the area of working conditions, no compensatory damages could be recovered therefore; (2) claim that recovery could not be had for acts of discrimination occurring prior to the amendment of Civil Rights Act to cover governmental units could not be raised for first time on appeal, and (3) that the plaintiff obtained a determination that she was discriminated against in conditions of employment did not establish her as a "prevailing party" for purpose of awarding attorney fees.

Reversed and remanded with direction.

Discharged Because of Sex (37)

Dr. Sharon Johnson, v. University of Pittsburgh et al. (1973), Civ. A. No. 73-120. 359 F.Supp. 1002, United States District Court, W. D. Pennsylvania.

An action by an untenured assistant professor against the university and officials of the university on the grounds that she was to be discharged because of her sex, wherein the plaintiff sought a preliminary injunction. The District Court held that the plaintiff was entitled to the preliminary injunction restraining her discharge until determination of her action under the Civil Rights Act, in view of testimony indicating disparate treatment of males and females based upon sex, damage to her professional reputation, impairment of her ability to get a job and adverse effect upon a grant which had been given to the university for research to be done by the plaittiff and in absence of showing that the university would sustain any actual damage if preliminary injunction were granted.

Preliminary injunction issued.

Conspiracy to Discharge (38)

Nan Pendrell v. Chatham College, Pittsburgh, Pennsylvania, et al., (1974), Civ. A. No. 71-1160. 370 F. Supp. 494, United States District Court, W. D. Pennsylvania.

An action was brought by a former associate professor at a college under the Civil Rights Act for relief based on alleged discrimination in regard to her discharge. The defendants moved to dismiss. The District Court held that the plaintiff failed to demonstrate existence of the requisite element of state action to state a cause of action under color of state law section of the Civil Rights Act, but did make sufficient allegations to state a claim under the conspiracy section of the Act.

Order in accordance with opinion.

Denial of Tenure Based on Sex (39)

Equal Employment Opportunity Commission, Barbara Ehrlich White, and Christiane L. Joost-Gaugier, v. Tufts Institution of Learning, (1975), Civ. A. No. 73-2494-M. 421 F.Supp. 152, United States District Court, D. Massachusetts.

The Equal Employment Opportunity Commission brought action against the university for relief from alleged discriminatory employment practices. Two female faculty members who had been denied tenure and terminated by the university were permitted to intervene as plaintiffs. On plaintiffs' application for preliminary injunctive relief, the District Court held that (1) the evidence concerning one of the female faculty members was insufficient to establish a prima facie case of unlawful sex discrimination, (2) that evidence as to the other faculty member sufficed to establish a prima facie case that sex bias had influenced the decision to deny her tenure; and (3) that the potential of irreparable harm to the faculty member who may have been denied tenure on the basis of unlawful discrimination warranted preliminary injunctive relief.

Ordered in accordance with opinion.

Denial of Promotion Based on Sex (40)

Helen A. Cohen v. Illinois Institute of Technology, (1975), No. 74-1930, 524 F.2d 818, Appeals, 7th Cir.

A former assistant professor at the Illinois Institute of Technology brought a Civil Rights Act suit against the university and others to recover for alleged sex-based discrimination against female faculty in promotion and salary. The U. S. District Court for the Northern District of Illinois, dismissed the complaint, and plaintiff appealed. The Court of Appeals held that neither fact that the institute used the word "Illinois" in its name, that it received financial and other support from the state, that it was pervasively regulated by the state

or that the state failed to take affirmative action to prevent the institution from using gender as a criterion for faculty compensation and promotion warranted finding that the challenged conduct was state action, especially absent allegation that state involvement lent any support to any act of discrimination, that statute proscribing private conspiracies to deprive a person of a constitutionally protected right does not apply to all tortious, conspiratorial interferences with the rights of others and that such statute did not afford plaintiff any cause of action based on alleged conspiracy of the administrators to deprive her of her Fourteenth Amendment right to equal protection.

Affirmed.

Tenure Denial Based on Sex (41)

Jean K. Wagner, v. Long Island University et al., (1976), No. 75C2106. 419 F.Supp. 618, United States District Court, E. D. New York.

A college professor who was denied tenure brought action under the Civil Rights Act and under the Labor Management Relations Act seeking to eliminate alleged unlawful sex discrimination with respect to her employment and to compel the college to reappoint her to the faculty with tenure. On plaintiff's motion for a preliminary injunction, the District Court held that because the plaintiff would be significantly injured by interruption of her employment and because the college established no substantial harm which would result from continuing the plaintiff's employment pending determination on the merits, the interests of justice required that a preliminary injunction be granted.

Ordered in accordance with opinion.

Promotion Denial Based on Sex (42)

Christine M. Sweeney v. Board of Trustees of Keene State College et al., v. Board of Trustees of Keene State College et al., (1978), Nos. 77-1243 and

77-1244, 569 F.2d 168, Appeals, 1st Cir.

Action was brought by a state college professor seeking backdating of her promotion to date of her first attempt to obtain promotion and accompanying adjustment in her salary for the intervening years. The United States District Court for the District of New Hampshire found that the professor had been a victim of sex discrimination in her second effort to gain promotion and ordered her promotion backdated to 1975, with appropriate back pay and awarded her attorney fees and costs, and defendants appealed and plaintiff cross-appealed. The Court of Appeals sitting by designation, held that: (1) finding that sex discrimination impeded the professor's second promotion effort was not clearly erroneous and (2) findings against the professor on the issue of salary discrimination were also not clearly erroneous.

Affirmed.

Tenure Dispute Based on Sex (43)

Connie Rae Kunda, v. Muhlenberg College. Civ. A. No. 77-1955. (1978), 463 F.Supp. 294, United States District Court, E D. Pennsylvania.

A female college teacher brought action against her former employer, alleging that she was denied promotion and tenure because of her sex. The District Court, held that: (1) the female teacher established by a preponderance of the evidence that the college discriminated against her on the basis of sex by failing to promote her to the rank of assistant professor; (2) though the female teacher presented a prima facie case of discrimination in connection with the college's failure to grant her tenure, the college rebutted the prima facie case by a preponderance of the evidence when it articulated a legitimate, nondiscriminatory and job-related reason for the failure to grant tenure to plaintiff, namely, her lack of a masters degree; (3) the female teacher established by a preponderance of the evidence that she was subjected to disparate treatment because of her sex

in that she received different counseling concerning the requirements for promotion than that received by males in her department; (4) the female teacher proved that the difference in treatment was the result of purposeful discrimination on the basis of sex, in violation of the Civil Rights Act of 1964; (5) even assuming that plaintiff made a prima facie showing of disparate impact on women in connection with the terminal degree requirement for tenure, the college rebutted the showing through evidence that the terminal degree requirement was closely related to the duties of a faculty member and served a legitimate need in an educational institution; (6) the denial of tenure to the teacher was not based on her sex, and (7) the teacher was entitled to an award of tenure contingent upon obtaining her masters degree within two full school years.

Ordered in accordance with opinion.

CHAPTER III

Racial Discrimination

This section deals with racial discrimination. Although most of the cases deal with discrimination against black faculty members, the cases establish judgments for all racial groups and indicate the direction the law has taken toward racial equality. Most of these cases deal with the time period involving integration of school systems in the late 60's and the 70's. Examined in detail is discrimination: against racial minority groups, during integration, and in the form of testing in which the persons are required to take various tests with cut-off scores in order to qualify for positions.

Minority Group Status

Discharge of Black Female (44)

Bettye Joe Baker et al., v. Columbus Municipal Separate School District et al. (1974), No. EC 70-52-S. EPD 10,165, United States District Court, Northern District of Mississippi, Eastern Division.

A black public schoolteacher discharged for alleged incompetence and insubordination was entitled to reinstatement with back pay where it was shown that she was terminated due to racial discrimination and in retaliation for her part in an earlier successful race bias suit against the school district. Under the circumstances of the school district and board having a history of involvement in racially biased employment practices, the burden of showing that the claimant's discharge was for just cause shifted to the school district. Under standards of just cause set forth in a determination applicable to claimant, just cause for discharge required conduct repulsive to minimum standards of decency--such as honesty and integrity--required of schoolteachers. Absent a showing that the teacher violated such minimum standards, her discharge could not be upheld. 42 U.S.C. Secs. 1981, 1983 and 2000e.

Back references. -- 1064; 1350.

Discrimination Against Black Applicants (45)

Bernice Armstead et al. v. Starkville Municipal Separate School District et al. Bettye Joe Baker et al. v. Columbus Municipal Separate School District et al. (1975), Nos. EC 70-51-S and EC 70-52-S. 395 F.Supp. 304, United States District Court, N. D. Mississippi, E. D.

In two cases involving the Starkville and Columbus school districts, the United States District Court for the Northern District of Mississippi at Aberdeen found that the districts discriminated against black teachers in their employ and against black applicants for teaching positions. In the Starkville case,

the Court of Appeals affirmed in part and reversed in part and in the Columbus case it affirmed. On plaintiffs' motion for award of attorney fees and expenses, the District Court held that (1) the section of the Emergency School Aid Act authorizing allowance of attorney fees to the prevailing party was applicable even though the district court's final order on the merits in the cases and the affirmances by the Court of Appeals in both cases all occurred prior to the effective date of the statute; (2) that imposition of attorney fees on school district in an amount less than 2% of district's annual budget was not such a showing of "special circumstance" as to blunt the interest in securing constitutional operation of the schools; (3) and that districts would be permitted to pay in installments the fees awarded.

Order accordingly.

Racial Discrimination Through Nonrecommendation (46)

Mrs. Vella Wright and Miss Saora Meyers v. Houston Independent School District et al., (1975), Civ. A. No. 72-H-1484. 393 F.Supp. 1149, United States District Court, S. D. Texas, Houston Division.

Action for damages was brought against a school district and others by two black former school teachers who were not recommended for reemployment for the 1971 school year. The District Court held that (1) school districts in Texas cannot invoke the Eleventh Amendment against suits for monetary awards, (2) as of the time that plaintiffs were demoted and subsequently not rehired, the Houston Independent School District school board was operating within the "Singleton" mandate, and (3) the evidence established that no objective non-racial criteria were used to decide not to rehire plaintiffs, and it could not be said, in view of that fact and the fact that the decision not to rehire them came within months of their "cross-over" into white schools, that racial

prejudice may not have entered into the decision at some point; accordingly, plaintiffs were entitled to reinstatement as teachers in the same status they previously had.

Judgment for plaintiffs.

Racial Discrimination Toward Coach (47)

Othello Cross, v. The Board of Education of the Dollarway, Arkansas School District, et al., (1975), No. PB-74-C-205. 395 F. Supp. 531, United States District Court, E. D. Arkansas, Pine Bluff Division.

A black coach brought civil rights action against the board of education, claiming that he had been victimized by racial discrimination practiced by the district in hiring, compensation, and promotion of its employees. The District Court sitting by designation, held (1) that defendants refused to promote plaintiff to position of head high school football coach and athletic director in 1969 and 1973 solely because of his race, (2) the plaintiff was entitled to back pay for 1969 through 1974 school years, (3) that defendants must either promote plaintiff to position of head football coach and athletic director or compensate plaintiff at a salary equal to that which he would receive if he were so promoted, and (4) that, although plaintiff might have performed many tasks at all-black school comparable to usual duties of an athletic director, he could not claim entitlement to back pay without having contracted for performance of such duties.

Order accordingly.

Race and Due Process Discrimination (48)

Douglas Warren Webster, v. James F. Redmond et al., (1977), No. 72 C 3005. 443 F.Supp. 670, United States District Court, N. D. Illinois, E. D.

A teacher brought a civil rights action against school officials, alleging that he had been subjected to race discrimination and deprivation of due process of law when appointment to a vacant principalship had been denied him. The District Court held, inter alia, that the teacher's claim had merit and that he was entitled to the relief prayed.

Judgment for plaintiff.

University May Be Selective (49)

Nolvert P. Scott, Jr. Individually and on behalf of all other persons similarly situated, v. The University of Delaware et al., (1978), Civ. A. No. 74-58. 455 F.Supp. 1102, United States District Court, D. Delaware.

A former state university professor brought employment discrimination suit against the university. The District Court held that: (1) failure of the university to renew the professor's contract resulted from a department opinion that he was not, and would not develop into, an acceptable permanent professional colleague, because of his lack of interest in pursuing scholarship and because of ineffective teaching; (2) the university requirement that an individual have a Ph.D. degree or equivalent to attain an assistant professorship, while having a disparate impact upon blacks, was justified by the legitimate interests of the university, and (3) the university's subjective employment criteria and its decentralized decision-making process did not result in blacks being adversely affected by the selection process.

Judgment for defendants.

Racially Motivated Nonreemployment (50)

D. F. Glover, v. Harold T. Daniel, etc., et al., (1970), No. 29253, 434 F.2d 617, Appeals, 5th Cir.

A school principal brought action under the Civil Rights Act for the refusal of the school district to reemploy him. The United States District Court for the Northern District of Georgia denied relief and the principal appealed. The Court of Appeals held that the District Court's finding that the principal had failed to show that the nonrehiring was racially motivated was not, under the evidence, clearly erroneous.

Affirmed.

Blacks Paid Less Than Whites (51)

Arkansas Education Association et al., v. Board of Education of the Portland, Arkansas School District, et al. Arkansas Education Association et al., v. Board of Education of the Portland, Arkansas School District, et al., (1971), Nos. 20412, 20413, 446 F.2d 762, Appeals, 8th Cir.

An action was brought against the school district on behalf of the class of black teachers on account of alleged discrimination in salaries. The United States District Court for the Western District of Arkansas dismissed the action and plaintiffs appealed and defendants cross appealed. The Court of Appeals held that the teachers' association and the individual black teacher were proper plaintiffs to bring class action, that the class was sufficiently large, and that the school district's systematic, and without exception, paying black teachers substantially less than white teachers was constitutionally impermissible and all black teachers were entitled to recover the difference between what they were actually paid and what they would have been paid if all teachers had been treated equally.

Judgment vacated and case remanded.

Racial Bias Results in Contract Nonrenewals (52)

Ira Mae Sparks et al., v. Merritt Griffin, Individually, et al., (1972), No. 71-2747, 460 F.2d 432, Appeals, 5th Cir.

Two black teachers brought suit challenging the school district board's failure to renew their teaching contracts for the 1968-69 school year and seeking reinstatement. The United States District Court for the Eastern District of Texas denied all relief to plaintiffs, and they appealed. The Court of Appeals held, inter alia, that the District Court's finding that the board voted not to renew the contracts of the plaintiffs for the 1968-1969 academic year on the basis of nonracial, objective and reasonable criteria was clearly erroneous; on the contrary, the conclusion that the nonrenewals were in fact racially motivated was compelled by the surrounding circumstances, including the school superintendent's letters to an HEW official convincingly demonstrating racial bias.

Reversed and remanded with directions.

Racial and First Amendment Discrimination (53)

Eddie Chambers, v. Omaha Public School District et al., (1976), No. 75-1666, 536 F.2d 222, Appeals, 8th Cir.

A former guidance counselor brought civil rights action against the school district based on allegations that he was dismissed because of his race and because of his exercise of First Amendment freedoms. The District Court for the District of Nebraska dismissed and the former guidance counselor appealed. The Court of Appeals held that: (1) Nebraska statute requiring formal charges under Nebraska Fair Employment Practices Act to be filed with Nebraska's Equal Opportunity Commission within 180 days did not provide applicable statute of limitations for federal civil rights action, (2) that Nebraska statute requiring actions predicated on federal statute to be brought within three years was applicable; (3) that the guidance counselor was not denied equal protection by fact that Nebraska statutes provide four-year statute of limitations for actions predicated on Nebraska statutes; (4) that the three-year limitation period was not so short

as to deny due process; and (5) that actions under civil rights statute were not tolled while the guidance counselor pursued administrative remedies within the United States Department of Health, Education and Welfare.

Affirmed.

Racial Discrimination and Unfair Employment Practices (54)

United States of America, v. Hazelwood School District et al., (1976), No. 75-1422. 534 F.2d 306, United States Court of Appeals, Eighth Circuit.

The United States Attorney General brought a suit under Title VII under the Civil Rights Act of 1964 against a school district, alleging racial discrimination and the district's employment practices. The United States District Court for the Eastern District of Missouri held that the United States had failed to prove that the district had engaged in discriminatory practices, and denied relief, and the United States appealed. The Court of Appeals held that the Government had proved an unrebutted prima facie case of employment discrimination, and that discrimination against specific individuals had been established in 16 instances, but not as to 39 other black applicants for teaching positions.

Reversed and remanded.

Racial Discrimination Through Policies (55)

Irma Clark et al., v. Lon Mann et al., (1977), No. 76-1022, 562 F.2d 1104, United States Court of Appeals, 8th Cir.

Appeal was taken from an order of the United States District Court for the Eastern District of Arkansas entering judgment for defendant school district officials in a civil action for deprivation of rights brought against them by black faculty members and administrators alleging violation of constitutional rights in connection with terminations, recruitment, promotion, and salaries. The Court of Appeals held that: (1) the class of the plaintiffs was properly

limited to those who were named plaintiffs or who testified at the trial; (2) the applicable limitations period was three years; (3) plaintiff teachers were not entitled to due process hearings posttermination; (4) the trial court properly placed the burden of proof on plaintiffs throughout the trial; (5) findings that dismissal of certain of the named plaintiffs was not based on impermissible considerations were not clearly erroneous, but (6) findings that dismissals of certain other named plaintiffs were not racially motivated were clearly erroneous.

Affirmed in part, reversed in part, and remanded.

Racial Discrimination Through Policies (56)

Herbert Williams, Virginia S. Williams, Robert Manson, Mary Manson and Donald Massey, v. Robert Anderson, Ella Mae Carroll, William Doug Grizzle, Lew Sorrels, Carl Geisler, Directors of the Brinkley School District, and Dewey Snowden, Superintendent of the Brinkley School District, (1977), Nos. 76-1172 and 76-1108. 562 F.2d 1080, Appeals, 8th Cir.

Appeal was taken from an order of the United States District Court for the Eastern District of Arkansas awarding limited relief to certain black faculty members in a civil action for deprivation of rights and which they alleged purposeful racial discrimination on the part of the defendant school district with respect to assignment, salary, promotion and hiring of black faculty members. The Court of Appeals held that: (1) the trial court erred in failing to find that a prima facie case of purposeful racial discrimination had been established; (2) the relief ordered by the trial court for the 1967-1968 school year was barred by the applicable three-year statute of limitations; (3) the trial court erred in employing a "sole basis" standard in determining whether a black applicant was entitled to relief with respect to her claim that she was refused a faculty position because she was black, and (4) the school district had failed

to rebut the presumption in favor of individual relief with respect to several plaintiffs.

Affirmed in part, reversed in part, and remanded.

United States Supreme Court Case Minority Group Hiring Practices (57)

Hazelwood School District et al. v. United States, (1977), 433 F.2d 299, Appeals, 8th Cir., No. 76-255.

The United States brought this action against petitioners, the Hazelwood, Mo., School District, located in St. Louis County, and various officials, alleging that they were engaged in a "pattern or practice" of teacher employment discrimination in violation of Title VII of the Civil Rights Act of 1964, as amended, which became applicable to petitioners as public employers on March 24, 1972. The District Court following trial ruled that the Government had failed to establish a pattern or practice of discrimination. The Court of Appeals reversed, in part on the ground that the trial court's analysis of statistical data rested on an irrelevant comparison of black teachers to black pupils in Hazelwood, instead of a comparison of black teachers in Hazelwood to black teachers in the relevant labor market area, which it found to consist of St. Louis County and the city of St. Louis, where 15.4% of the teachers are black. In the 1972-1973 and 1973-1974 school years only 1.4% and 1.8%, respectively, of Hazelwood's teachers were blacks, and this statistical disparity, particularly when viewed against the background of Hazelwood's teacher hiring procedures, was held to constitute a prima facie case of a pattern or practice of racial discrimination. Petitioners contend that the statistical data on which the Court of Appeals relied cannot sustain a finding of a violation of Title VII. Held: The Court of Appeals erred in disregarding the statistical data in the record dealing with Hazelwood's hiring after it became subject to Title VII and the court should have remanded the case to the District Court for further findings as to the relevant labor

market area and for an ultimate determination whether Hazelwood has engaged in a pattern of practice of employment discrimination since March 24, 1972. Though the Court of Appeals was correct in the view that a proper comparison was between the racial composition of Hazelwood's teaching staff and the racial composition of the qualified public school teacher population in the relevant labor market, it erred in disregarding the possibility that the prima facie statistical proof in the record might at the trial court level be rebutted by statistics dealing with Hazelwood's post-Act hiring practices such as with respect to the number of blacks hired compared to the total number of black applicants. For, once a prima facie case has been established by statistical work-force disparities, the employer must be given an opportunity to show that "the claimed discriminatory pattern is a product of pre-Act hiring rather than unlawful post-Act discrimination," Teamsters v. United States, 431 U. S. 324, 360. The record showed, but the Court of Appeals in its conclusions ignored, that for the two-year period 1972-1974 3.7% of the new teachers hired in Hazelwood were blacks. The court accepted the Government's argument that the relevant labor market was St. Louis County and the city of St. Louis without considering petitioners' contention that St. Louis County alone (where the figure was 5.7%) was the proper area because the city of St. Louis attempts to maintain a 50% black teaching staff. The difference between the figures may well be significant since the disparity between 3.7% and 5.7% may be sufficiently small to weaken the Government's other proof, while the disparity between 3.7% and 15.4% may be sufficiently large to reinforce it. In determining what figures provide the most accurate basis for comparison to the hiring figures at Hazelwood numerous other factors, moreover, must also be evaluated by the trial court. Pp. 306-313.

534 F.2d 805, vacated and remanded.

Integration

Blacks Not Rehired Blamed on Integration (59)

Mary A. Franklin et al., v. County School Board of Giles County and P. E. Ahalt, Division Superintendent of Schools of Giles County, (1965), No. 64-C-73-R. 242 F.Supp. 371, United States District Court, W. D. Virginia, at Roanoke.

Black teachers, who had not been reemployed when black schools were abolished, and organization representing black teachers throughout the State brought action against the County School Board of Giles County for determination of the rights of the black teachers. The District Court held that where it had been the policy in the past when white schools were consolidated to retain in the school system white teachers whose schools had been closed, and thereafter the dual school system was abolished, black schools were abandoned, and black students were transferred to formerly all white schools, refusal to reemploy black teachers, who had taught at black schools, because there were no vacancies then existing in other schools in the system rather than by comparison of effectiveness of black teachers with other teachers in the system was discriminatory and violated their rights under Fourteenth Amendment.

Judgment for black teachers and association.

Racially Discriminatory Actions During Integration (60)

James Roy McBeth, Ervine Hawthorne, Lee Calloway, and the Arkansas Teachers Association, Inc., v. The Board of Education of the DeVall's Bluff School District No. 1, DeVall's Bluff, Arkansas, and J. O. Clark, Superintendent of Schools, (1969), No. LR-68-C-206. 300 F.Supp. 1270, United States District Court, E. D. Arkansas, W. D.

An action by displaced black teachers, whose employments were terminated when black school closed pursuant to integration plan, against the school board. The District Court held that evidence established that terminations of employment of a teacher and principal were racially discriminatory, and that they were

accordingly, entitled to offers of employment.

Decree accordingly.

Due Process and Equal Protection Discrimination (61)

Nathaniel James et al., v. The Beaufort County Board of Education, a public body corporate, (1971), Civ. No. 680. 348 F.Supp. 711, United States District Court, E. D. North Carolina, Washington Division.

A class action against the county board of education by a black principal, a black teacher and teachers' association, seeking injunctive relief to secure rights, privileges and immunities guaranteed by due process and equal protection clauses of the United States Constitution. The District Court held that the county board of education which failed to maintain ratio, of black teachers to white teachers, existing prior to integration of its schools would be enjoined from employing, assigning, promoting or dismissing teachers, principals and all professional school personnel solely on the basis of race and would be required to make good the faith effort to restore racial balance of school faculties and to offer existing vacancies to qualified black teachers and principals. The Court further held that the board would be required to pay damages to plaintiff-principal and to offer him a position comparable to his prior position.

Order accordingly.

Integration and Declining Enrollment Factors in Racial Discrimination (62)

Robert Clark Keglar and Elbert S. Burten, v. East Tallachtchie School District et al., (1974), No. DC 73-82-K. 378 F. Supp. 1269, United States District Court, N. D. Mississippi, Delta Division.

Two teachers who had been dismissed by school district which was under desegregation order and which was faced with declining enrollment brought action

against the school district. The District Court held that (1) the teacher who had not applied for rehiring was not entitled to relief; (2) that the school district properly determined that teachers of nonacademic subjects should be the first to be dismissed when the district was faced with declining enrollment; (3) that the length of service was proper criteria for deciding which academic teachers were to be dismissed, but that length of service should be determined on districtwide basis rather than single-school basis; (4) and that teacher who had not been offered available positions for which he was qualified and for which he applied had been denied constitutional rights and was entitled to reinstatement.

Order accordingly.

"Black" and "White" Positions Not Constitutionally Permissible (63)

Earlean McCormick, v. Attala County Board of Education et al., (1976), No. EC 74-94-K. 424 F.Supp. 1382, United States District Court, N. D. Mississippi, E. D.

A black teacher brought a civil rights action claiming, inter alia, that failure to rehire her was for constitutionally impermissible reasons. Following decision failing to grant individual relief, the District Court, held that (1) where, in a school district which had become effectively desegregated, plaintiff was not rehired following staff reduction solely because of the board's policy of replacing black teachers with blacks and white teachers with whites, and white teachers no better qualified than the plaintiff had been hired to fill "white" vacancies, plaintiff was entitled to back pay and offer of reinstatement; (2) that the plaintiff was not entitled to back pay prior to the time she applied for reemployment; (3) and that award for attorney fees was warranted, though not in full amount claimed.

Ordered accordingly.

Principalship Refused Due to Racial Discrimination (64)

Joseph Hardy, v. Leon L. Porter et al., (1977), No. DC 74-103-K. 443 F.Supp. 1164, United States District Court, N. D. Mississippi, Delta Division.

A former assistant principal brought suit against the superintendent and members of the school board for an order directing his employment as high school principal and for back pay. The United States District Court for the Northern District of Mississippi entered judgment for defendants, and plaintiff appealed. The Court of Appeals affirmed in part and vacated and remanded in part. On remand, the District Court held that: (1) transfer of the black educator from the position of principal of a formerly all black junior-senior high school to assistant principalship of a large integrated high school upon entry of desegregation order was not an unlawful demotion, (2) school board which had consistent employment practice, since advent of desegregation, of staffing formerly white schools with white administrators and formerly black schools with black administrators continued to perpetrate remnant of constitutionally impermissible dual school system, (3) school board and officials failed to rebut prima facie case of racial discrimination against the black educator who was refused a high school principalship on two occasions and who was qualified for such position, and (4) the black educator was entitled to recover as damages difference between the pay he would have received as principal and pay he actually received and was entitled to recover reasonable attorney fees.

Order accordingly.

Fourteenth Amendment Violation (65)

Mary A. Franklin, Lawrence H. Leftwich, Mary F. Montgomery, Sylvia J. Harvey, Hugh D. Woodlife, Sylvia D. Austin, Alma G. Spivey and Virginia Teachers Association, Inc., v. County School Board of Giles County and P. E. Ahalt, Division

Superintendent of Schools of Giles County, (1966), No. 10214, 360 F.2d 324, Appeals, 4th Cir.

Seven black teachers, who had been discharged by the County School Board of Giles County, when the Board had abandoned two black schools and had integrated the pupils, and their teachers' association brought action against the Board and the Division Superintendent of Schools of Giles County. The United States District Court for the Western District of Virginia entered a judgment holding that the black teachers had been improperly discharged in violation of the Fourteenth Amendment, but granting the black teachers inadequate relief, and they appealed. The Court of Appeals held that the black teachers were discharged because of their race, where the Board employed eight new white teachers in the county school system, and that the black teachers were entitled to a mandatory injunction requiring their reinstatement and were entitled to reemployment in any vacancy which should occur for which they were qualified by certificate or experience.

Reversed and remanded.

Students Challenge For Integrated Faculty (66)

Ceiners Jackson et al., v. Marvell School District No. 22 and C. G. Cowsert, Superintendent of Schools, (1968), No. 18762, 389 F.2d 740, Appeals, 8th Cir.

An action by black students challenging the validity of the school district's proposed desegregation plan. The United States District Court for the Eastern District of Arkansas retained jurisdiction and appeal was taken. The Court of Appeal held that the provision for the desegregation of the faculty that vacancies on professional and teaching staff should be filled by employment of the best qualified, available applicant without regard to race, containing no provision for voluntary transfer or compulsory assignment of members of the faculty of

one school to another, was inadequate.

Remanded with directions.

Black Teachers For Black Pupils Not Acceptable (67)

North Carolina Teachers Association and Gaines W. H. Price, v. The Asheboro City Board of Education, a public body corporate, (1968), No. 11121, 393 F.2d 736, Appeals, 4th Cir.

A proceeding to determine whether the rights of black teachers displaced in the school system by desegregation of the black school were violated upon failure to reemploy them. The United States District Court for the Middle District of North Carolina determined that no one had been denied due process or equal protection, denied injunctive relief, and dismissed the amended complaint, and the teachers and teachers' association appealed. The Court of Appeals held that the denial of due process and of equal protection of the laws occurred when black teachers who theretofore had provided the teaching service were considered to have lost their jobs "teaching the black pupils" and to stand in the position of new applicants for employment.

Reversed and remanded.

Racial Discrimination During Integration (68)

Mrs. Elvira S. Rolfe and Mrs. Bernice L. Peebles, v. County Board of Education of Lincoln County Tennessee, etc., et al., (1968), No. 17498, 391 F.2d 77, Appeals, 6th Cir.

An action was brought against the county board of education and superintendent of schools by two discharged teachers on the grounds of alleged racial discrimination in discharge. From an adverse judgment of the United States District Court, defendants appealed. The Court of Appeals held that where the school desegregation plan resulted in a decrease in enrollment in one school

and necessitated reduction in faculty, but board assigned only teachers of one race to that school. Non-tenure teachers displaced from the school were entitled to have their qualifications for continued employment compared with those of other non-tenure teachers within the system and not just within the school.

Affirmed.

Discrimination Through Teacher Selection on Basis of Race (69)

United States of America, v. School District 151 of Cook County, Illinois, et al., (1969), No. 17022, 404 F.2d 1125, Appeals, 7th Cir.

A civil rights action was brought by the United States Attorney General to desegregate the grammar schools in the school district. The United States District Court for the Northern District of Illinois granted preliminary injunction and defendants appealed. The Court of Appeals held that evidence sustained findings that the school board had assigned teachers on the basis of race, and had drawn attendance zones, bussed students and selected school sites to preserve segregation and held that such conduct was unconstitutional state action denying equal protection of law to black children.

Preliminary injunction order affirmed and cause remanded for further proceedings upon government's motion for permanent injunction.

Integration Based Racial Discrimination (70)

Anthony T. Lee et al., United States of America, Intervenor and Amicus Curiae, National Education Association, Inc., v. Macon County Board of Education et al., (Muscle Shoals School System), (1971), No. 71-2963, 453 F.2d 1104, Appeals, 5th Cir.

An action was taken by the former school principal for injunctive relief and damages because of the school system's alleged refusal to appoint him to

principal vacancies within the system or to tantamount positions. The United States District Court for the Northern District of Alabama entered judgment denying a petition for reinstatement as principal, for back pay and for lost retirement benefit but requiring the school board to file objective, nonracial criteria for demotion and dismissal of principals. An appeal was taken. The Court of Appeals held, inter alia, that where desegregation order was entered and as a result thereof the black principal of the all-black school lost his job when the school was ordered closed, any future principalship vacancies in the four schools in the district must be filled from ranks of the predesegregation order of the population and the school board could not go outside the population to appoint future principals of another race, color or national origin, even if it stayed within its own school system, until that population was exhausted, until members of population voluntarily opted out or unless a member of the population was unqualified to serve.

Reversed in part and remanded with directions.

Racial Discrimination by Refusal to Rehire (71)

Bennie G. Thompson, Evelyn Thomas et al., etc., v. Madison County Board of Education et al., etc. (1974), No. 73-3509, 496 F.2d 682, Appeals, 5th Cir.

Black teachers sought injunctive and other relief on the grounds that the school board had engaged in racial discrimination by refusing to rehire them. Following remand, the United States District Court for the Southern District of Mississippi denied relief and the teachers appealed. The Court of Appeals held that (1) Singleton procedures for effectuation of staff reductions resulting from judicially-ordered desegregation were applicable where plaintiffs' employment was terminated after effective date of desegregation decree but while desegregation was still in the process of implementation and where plaintiffs' conduct was not such as to justify refusal to rehire without

regard to objective standards required by Singleton, (2) that in light of United States Supreme Court decision handed down while the case was pending on appeal, remand was required on issue of whether plaintiffs' claim for back pay was barred by the Eleventh Amendment; (3) and that plaintiffs were entitled to attorneys' fees under the Emergency School Aid Act of 1972.

Reversed and remanded with directions.

Racial Discrimination (72)

Natherlean G. Kelly et al., v. West Baton Rouge Parish School Board et al., (1975), No. 74-1240. 517 F.2d 194, United States Court of Appeals, Fifth Circuit.

Two black probationary teachers who had not been rehired for 1969-70 school term by the school system which reduced its staff following desegregation brought civil rights action against the school board and superintendent. The District Court for the Middle District of Louisiana dismissed and the teachers appealed. The Court of Appeals held that: (1) where action was brought under the statute relating to equal protection under the law rather than the statute relating to actions for deprivation of civil rights, the court had jurisdiction over the school board whether or not it was a "person" within the latter statute; (2) that evidence sustained the finding that the failure of the school board to reappoint the teachers was not racially motivated; (3) that the probationary teachers were not deprived of liberty by their failure to be reappointed and were thus not entitled to a pretermination hearing; (4) but that the teachers, who were qualified elementary school teachers, were entitled to reappointment to their positions at least from the time of their interviews in 1971, in response to letters from the superintendent which told them that the school system was interviewing for prospective teachers for 1971-72 school term.

Reversed and remanded.

Racial Discrimination During Integration (73)

Tallulah Morgan et al., v. John J. Kerrigan et al. and John P. Doherty et al., (1976), No. 75-1097. 530 F.2d 431, United States Court of Appeals, First Circuit.

A teachers' union appealed from the order of the District Court for the District of Massachusetts which, in connection with school desegregation, fixed goals governing teacher recruitment and hiring. The Court of Appeals held that the district court did not err in directing that one black teacher be hired for each white teacher until the percentage of black permanent teachers in the district was 20%, the approximate percentage of blacks in the total city population; and that the court, which permitted rehiring of white provisional teachers before turning to the hiring of new provisionals, did not err in requiring that, following rehiring of all white provisionals, an equal number of new black provisionals be hired before any new white provisionals were hired.

Affirmed.

Racial Discrimination: Demotion and Discharge (74)

Ether L. Barnes, v. Jones County School District et al., (1977) 544 F.2d 804, No. 75-3162, United States Court of Appeals, Fifth Circuit.

A black teacher brought action against the school district seeking reinstatement and back pay on grounds that she was improperly demoted for the first year of the district's operation as unitary school system and that the decision not to renew her for the second year was also racially discriminatory. The United States District Court for the Southern District of Mississippi rendered judgment for defendant, and plaintiff appealed. The Court of Appeals held that paragraph three of the Singleton school desegregation case, which paragraph governs criteria to be employed in case of reduction in force on adoption of a unitary school system, was not applicable since on unitization there was an increase in faculty, notwithstanding that the number of blacks on the faculty decreased and

that immediate past history of racial discrimination established a prima facie case of violation of equal protection in the alleged demotion and discharge and, hence, the burden was on the school district to justify its actions by clear and convincing evidence.

Affirmed in part, vacated in part and remanded for further proceedings.

Demotion and Discharge Due to Racial Discrimination (75)

Cornell Reynolds, v. Abbeville County School District No. 60, et al., (1977), No. 76-1565., 554 F.2d 638, Appeals, Fourth Cir.

The plaintiff brought civil rights action on claim that his demotion from a principalship during the desegregation of the school system in 1970 and his discharge from an administrative assistant's position the following year were motivated by racial discrimination. The United States District Court for the District of South Carolina, at Greenwood entered judgment for the defendants, and plaintiff appealed. The Court of Appeals held that (1) disproportionate reduction of black principals raised an inference of discrimination which was required to be rebutted by school authorities; (2) failure of school authorities to consider the plaintiff even though he had higher certification than principals who were retained violated the requirement that teachers displaced from formerly racially homogeneous schools be judged by definite objective standards with all other teachers in the system for continued employment; (3) the superintendent's failure to consider the plaintiff, absent good cause, for positions that were filled by new employees violated applicable principles requiring that displaced teachers be given the same preference as to reemployment as that given to teachers not displaced and (4) plaintiff was entitled to an order directing school authorities to consider his reinstatement on the basis of definite, objective, uniform standards for employment and retention of principals giving full effect to his accreditation and experience and, if incumbents

are more highly qualified, he was required to be hired for the next vacant principalship, absent good cause for failure to employ him.

Reversed and remanded.

Demotions as a Result of School Desegregation (76)

Anthony T. Lee et al., United States of America, Amicus Curiae, National Education Association, Inc., et al., v. Russell County Board of Education et al., (1977), No. 76-3815, 563 F.2d 1158, Appeals, 5th Cir.

A school counselor and schoolteacher brought actions against the school board, contending that they had suffered wrongful demotions as a result of school desegregation process. The United States District Court for the Middle District of Alabama, entered judgment for the school board, and plaintiffs appealed. The Court of Appeals held that: (1) the trial court was not clearly erroneous in determining that the school counselor who was transferred from an all-grades black school to a counseling position at the elementary school as a result of the transfer, was not "demoted" within the meaning of the rule requiring that demotions or dismissals caused by desegregation be on the basis of objective and nondiscriminatory standards, and therefore, the counselor was not entitled to special preference in rehiring; (2) with respect to the schoolteacher's claim, the trial court's findings of fact and conclusions of law failed to address the question of whether the school board engaged in hiring on the basis of fixed racial ratios and whether the teacher was refused a position on the basis of such impermissible discrimination, and cause would be remanded to permit the trial court to decide, with appropriate findings, whether or not the teacher was impermissibly denied employment as a result of racial discrimination.

Affirmed in part; vacated and remanded in part.

Required Testing

Required Test Score or Graduate Degree Results in Racial Discrimination (77)

Bernice Armstead et al., v. Starkville Municipal Separate School District et al., (1971), No. EC 70-51-S. 325 F.Supp. 560, United States District Court, N. D. Mississippi, E. D.

An action was taken for declaratory and injunctive relief alleging that defendants unlawfully refused to employ black teachers and to hire black applicants for teaching positions and praying for permanent injunction preventing defendants from enforcing school board policy requiring in-service teachers and applicants for teaching positions to achieve certain score on examination or a master's degree as precondition to retention and employment in system. The District Court held that where examination which tests an individual's capacity for advanced studies at master's and doctoral level was used in enforcing school board policy requiring in-service teachers and applicants for teaching positions to achieve a certain score on examination or a master's degree as precondition to retention and employment and, as used, classified applicants and in-service teachers on the basis of race, the defendants did not discharge their very heavy burden of justification in showing an overriding purpose independent of invidious racial discrimination, and school board policy was an unconstitutional racial classification.

Plaintiffs held entitled to relief.

National Teachers Examination Scores Not Allowed for Hiring Criteria (78)

Bettye Joe Baker et al., v. Columbus Municipal Separate School District et al., (1971) No. EC 70-52, 329 F.Supp. 706, United States District Court, N. D. Mississippi, E. D.

An action by eight black teachers, national association of educators and state teachers' association against the school district, its superintendent and its board of trustees to enjoin alleged unlawful discrimination in the retention and employment of teachers and for damages because of wrongful refusal to employ

certain of the plaintiffs for summer teaching positions. The District Court held that the use by the Mississippi school district of a score of 1,000 on national teachers examination as a cut-off score for retention and employment of teachers within the district was unconstitutional racial classification.

Order in accordance with opinion.

Discrimination by Teacher Testing - National Teachers Examination Scores Not Allowed for Hiring Criteria (79)

Georgia Association of Educators, Inc. et al. v. Jack P. Nix, Individually and as State Superintendent of Schools, State of Georgia, et al., (1976), Civ. A. No. C74-1870A. 407 F.Supp. 1102, United States District Court, N. D. Georgia, Atlanta Division.

A civil rights action was brought for declaratory and injunctive relief arising out of a dispute over the use of an examination test score as a requirement for granting a six-year certification to teachers. The District Court held that the use of a minimum national teacher examination score of 1225 as one of requirements for issuance of six-year teacher certificates by state board of education had no rational relationship to the stated purpose of the six-year certificates and thus it created an arbitrary classification violative of equal protection.

Order accordingly.

Testing Criteria Results in Racial Discrimination (80)

United States of America, v. School Board of the City of Suffolk et al., Syvalius Walston, Jr., et al., v. School Board of the City of Suffolk et al., (1976), Civ. A. Nos. 392-70-N, 472-71-N. 418 F. Supp. 639, United States District Court, E. D. Virginia, Norfolk Division.

Black teachers formerly employed by the county school board brought action alleging that the board discriminated against them in terminating their employment. The United States District Court for the Eastern District of Virginia denied injunctive relief, reinstatement and back pay and the teachers appealed. The Court of Appeals, reversed and remanded, holding that the application of certain testing criteria to teachers which resulted in termination of their employment was discriminatory. On remand, the District Court held (1) that the "law of the case" did not estop defendants from showing that real cause for non-reemployment was other than failure to achieve required score on examinations; (2) that the section of the Civil Rights Act authorizing the Attorney General to initiate legal proceedings to aid school children did not authorize the Attorney General to seek relief on behalf of school teachers dismissed for allegedly racially discriminatory reasons; (3) that motion for certification of class action was not timely where an appeal on the merits had been taken before the motion was filed; (4) that an award of attorney fees was proper and that the teacher who taught for only one year before a year's absence because of pregnancy and who failed to apply for reemployment the first year she would have been able to return after her pregnancy could not recover.

Judgment accordingly.

Tests Valid for Determining Salaries (81)

United States of America and South Carolina Educational Association, et al. v. State of South Carolina, et al. (1978), Civ. A. No. 75-1610. 445 F.Supp. 1094, United States District Court, D. South Carolina, Columbia Division.

A suit was brought by the United States and others against the State of South Carolina, various state agencies, educational officials and local school districts challenging as racially discriminatory the use of national teacher examinations scores for certification purposes as well as a factor in determining

teacher salary. A three-judge district court held that: (1) state use of minimum score requirements on examinations for both certification purposes and as a factor in determining pay did not violate equal protection clause of the Fourteenth Amendment, since there was no discriminatory intent established; (2) the use of such test scores did have a rational relationship with the legitimate employment objective of state and school districts; (3) that use of the tests, although resulting in a disproportionately large disqualification of blacks, did not violate Equal Employment Opportunity Act since the evidence as to validation was sufficient to establish that the tests were sufficiently trustworthy and defendants met the business necessity test, and (4) there was sufficient evidence to establish the relationship between the use of the test as a factor in determining pay scale and a legitimate employment interest.

Judgment for defendants.

Discriminatory Testing Unreasonable (82)

Bernice Armstead et al., v. Starkville Municipal Separate School District et al., (1972), No. 71-2124, 461 F.2d 276, Appeals, 5th Cir.

It was held by the United States District Court for the Northern District of Mississippi that a test given to teachers to qualify for employment was not substantially related to knowledge and skills required of primary and secondary school teachers and that its use was unreasonable and discriminatory. The school district appealed. The Court of Appeals held that where the examination was not designed to and could not measure competency of a teacher or even indicate future teacher effectiveness, and the cut-off score would eliminate some good teachers, the score requirement for hiring and retention of teachers was not reasonably related to the purpose for which it was purportedly designed, and was violative of equal protection, whether or not it created racial classification.

The Court also held, however, that the school board was entitled to an opportunity to justify use of its requirement of an AA teaching certificate or master's degree in hiring or retention even if the effect of such requirement resulted in a racially unbalanced faculty.

Judgment reversed as to proscription of use of AA teachers' certificate or masters' degree requirements; judgment affirmed in all other respects.

Testing Limits Produce Racial Discrimination (8[illegible]

Syvalius Walston, Jr. et al., v. County School Board of Nansemond County, Virginia, et al., United States of America, v. Nansemond County School Board et al., (1974), Nos. 73-1492 and 73-1493, 492 F.2d 920, Appeals, 4th Cir.

Appeal from an order of the United States District Court for the Eastern District of Virginia denying injunctive relief, reinstatement and back pay to certain black teachers formerly employed by a county school board on allegations by the teachers that the board racially discriminated against them and other black faculty members by requiring, as a prerequisite to retention in employment, that the teachers take the national teacher examination and present a minimum score of 500 on the weighted common section of the examination. The Court of Appeals held that where application of the testing requirement had resulted in elimination of more black teachers than white teachers and the test did not purport to measure or predict classroom teaching skills, use of a cut-off score of 500 was patently arbitrary and discriminatory.

Reversed and remanded.

Steck Form Use Produces Racial Discrimination (84)

Mildred Harkless et al., v. The Sweeny Independent School District of Sweeny, Texas, and Fred Miller, Superintendent, et al., (1977), No. 75-1522, 554 F.2d 1352, Appeals, 5th Cir.

Black school teachers, whose contracts had not been renewed when dual school system integrated, brought action against the district and its board of trustees seeking reinstatement and back pay. The United States District Court for the Southern District of Texas denied relief and plaintiffs appealed. The Court of Appeals sitting by designation held that: (1) findings that no intentional racial discrimination occurred in rehiring of 100% of white teachers and rehiring of only 30% of black teachers, and that the Steck Form/overall rating process was the method used to evaluate teachers to arrive at employment decision, were clearly erroneous; (2) trial court abused its discretion in refusing grant leave to amend complaint to add 1981 as a statutory cause of action.

Affirmed in part, reversed in part and remanded.

CHAPTER IV

Visually Handicapped

Only one case is involved in this section dealing with the visually handicapped. Discrimination against the visually handicapped was found to be improper according to law and the party was awarded damages. Although this case deals with a visual handicap it is likely that it would have significance for most any form of recognized handicap.

Discrimination Toward Visually Handicapped Teacher (85)

Judith Gurmankin, on behalf of herself and all others similarly situated v. Matthew Costanzo, Superintendent of the School District of Philadelphia, et al., (1976), Civ. A. No. 74-2980. 411 F. Supp. 982, United States District Court, E. D. Pennsylvania.

A blind woman brought action under the Civil Rights Act of 1871 and the Rehabilitation Act of 1973, alleging that the hiring practices of a city school district discriminated against visually handicapped teachers. The District Court, held that the school district's refusal to consider blind persons to be teachers of sighted persons in public schools violated the blind woman's due process rights; and that under the circumstances, the appropriate remedy for the infringement of the blind woman's constitutional rights was that she be offered employment as a secondary school English teacher, with full seniority and other rights as though she had commenced employment in September, 1970.

Judgment for plaintiff.

CHAPTER V

Hiring Practices

These two cases deal with improper hiring practices according to law. They appear to be attempts by school systems to find acceptable methods of handling integration-type problems which arose during the major change in the systems. Discrimination takes many forms and these are just some of the different methods used, knowingly or unknowingly, by administrative personnel.

Discriminatory Hiring Practices (86)

Pat Oliver et al., v. The Moberly Missouri School District, a public school corp., et al., (1977), No. N74-32C. 427 F.Supp. 82, United States District Court, E. D. Missouri, N. D.

Civil rights action was brought by three black plaintiffs against the school district and school officials on the claim of discriminatory hiring practices with respect to teachers. The District Court held that (1) the record established that two plaintiffs were not the subject of discrimination, since record disclosed that their grade point averages, work experience and recommendations indicated that they were less qualified than their competitors, (2) that the school district failed to rebut inference of discrimination as to one plaintiff whose objective qualifications were as good as at least one of her competitors; (3) that the plaintiff, rejected black teacher applicant, on finding of improper discrimination, was entitled to be placed on a preferred hiring list immediately; and (4) that it was within discretion of court to award back pay in excess of any earnings actually received by plaintiff who had established improper discrimination, but, in light of fact that her actual earnings were nearly same as they would have been under defendants' employment, there was no reason to do so.

Order accordingly.

Race of Predecessors Not Valid Criteria for Future Hiring (87)

Earlean McCormick, v. Attala County Board of Education et al., (1976), No. EC7494-K. 424 F.Supp. 1382, United States District Court, N. D. Mississippi, E. D.

A civil rights action was instituted in respect to refusal of defendants to rehire plaintiff as a secondary school teacher. The District Court held that plaintiff was not entitled, under state or federal law, to a due process hearing

in absence of evidence that refusal to rehire was for a constitutionally impermissible reason, that the principal acted within the range of his lawful discretion in determining to carry out school board's directive for reductions in staff of social studies department by deleting the plaintiff's name from the rehiring list as the person with least seniority, and that racial discrimination could not be inferred from the statistical data in the case in the absence of evidence that a disproportionately large number of black teachers had been discharged incident to desegregation thrusts upon school board; however, the policy of the school district in hiring replacement teachers according to the race of their predecessors, so as to maintain a faculty racial balance, was constitutionally impermissible as amounting to a racial classification inasmuch as the district, having once successfully attained a unitary school system, was under a duty to hire teachers and administrators on basis of objective merit standards, and that an injunction would issue against continuance of employing teachers on anything but an objective merit standard.

Order accordingly.

CHAPTER VI

Violation of Due Process Rights And Other Significant Cases

This section deals with several cases which cannot be easily placed in one of the previous categories. They involve violation of due process rights and various significant cases dealing with retirement age, attempts to recover the costs of seeking employment while a discrimination case was in litigation, and improper termination of a faculty contract. Not all of these cases were won by the planitiff but they all indicate the direction the law is currently moving.

Unfounded Charges Not Explained (88)

Margo L. Morris, v. The Board of Education of the Laurel School District et al., (1975), Civ. A. No. 4684. 401 F.Supp. 188, United States District Court, D. Delaware.

A nontenured Delaware school teacher brought action against the board of education, board members, school superintendent and principal claiming that failure to rehire her for a fourth year violated her rights under the Civil Rights Act, under collective bargaining agreement and under due process clause of the Fourteenth Amendment. The District Court held that (1) the plaintiff failed to establish any racial discrimination, (2) that the Eleventh Amendment was no bar to the court's entertaining contract claims, (3) that the board breached the agreement by failing to afford the plaintiff an opportunity to tell her side of the story, (4) that although the plaintiff failed to establish a property interest she established that her discharge implicated her liberty interests, (5) that since the plaintiff was terminated without being informed of charges and her termination was based on charges that were unfounded, the plaintiff's procedural and substantive due process rights had been violated, (6) that violation of constitutionally protected liberty interest did not require reinstatement but only an opportunity to clear her name, (7) that contract violation required that she be considered for reemployment, (8) that she was entitled to damages for lost wages and that the superintendent, having acted in bad faith in making unfounded charges, was not entitled to protection under the law of official immunity but that the school board members were.

Order accordingly.

Due Process Not a Right (89)

Annis I. Cannady, v. Person County Board of Education et al., (1974), No. C-252-D-71. 375 F.Supp. 689, United States District Court, M. D. North Carolina, Durham Division.

A black nontenured elementary teacher brought an action under the Civil Rights Rights Act alleging discriminatory termination of her teaching contract. The District Court held that the evidence showed that the plaintiff's termination was the result of her ineffectiveness in team teaching and individualized instruction rather than being based on racial bias, that the plaintiff's 19-year longevity, in itself, did not raise a presumption that her termination constituted an infringement of her liberty and that the plaintiff had failed to show the type of additional relevant facts from which the court could imply a legitimate claim of non-statutory job tenure which would entitle her to due process in the termination of her teaching contract.

Judgment for defendants.

Cost of Seeking Employment Due to Discrimination Not Refundable (90)

L. R. Jackson and Mittie Jackson, v. Wheatley School District No. 28 of St. Francis County, Arkansas, et al., (1974), No. 73-1364, 489 F.2d 608, Appeals, 8th Cir.

An action seeking damages from the school district for alleged discriminatory discharge of plaintiffs-teachers. On the first appeal, the Court of Appeals reversed and remanded. Following remand, a second appeal was taken in which the district court was affirmed in part and reversed in part and remanded. After remand, the United States District Court for the Eastern District of Arkansas, Eastern Division, awarded damages, but excluded recovery for travel and other incidental costs incurred in attempting to secure employment. Request for immediate reinstatement was denied and plaintiffs were awarded $500 attorneys' fees but were denied their request for the balance of attorneys' fees incurred. The plaintiffs

appealed. The Court of Appeals held that because the plaintiffs had been reinstated and were teaching, the issue whether they were entitled to immediate reinstatement rather than opportunity for reinstatement at the time of the first vacancy was moot, that the plaintiffs were not entitled to consequential damages for living and commuting expenses incurred as a result of work outside the vicinity of their permanent home and that the trial court did not abuse its discretion in the amount awarded as attorney's fees.

Affirmed.

Improper Termination of Contract (91)

Virginia Cain, v. Robert McQueen et al., Virginia Cain, v. Robert McQueen et al., Virginia Cain, v. Robert McQueen et al., (1978), Nos. 76-1222, 76-1387, and 76-1439, 580 F.2d 1001, Appeals, 9th Cir.

Cain, a former teacher whose contract had not been renewed, brought actions under civil rights statute, First and Fourteenth Amendment, and state statute aginst the school trustees on claim of improper termination of contract. Cain also claimed entitlement to reinstatement and back pay. The United States District Court for the District of Nevada at Reno entered an order denying the defendants' motion to dismiss and granted limited summary judgment to Cain, and plaintiff and defendants appealed. The Court of Appeals held that: (1) plaintiff was a probationary teacher, rather than a substitute teacher, even though plaintiff had been hired after the school year had started, and thus was entitled at least to those procedural protections afforded under Nevada statute providing for an advance notice of "the reasons for the recommendation to dismiss or not to renew the contract" and an "opportunity to reply" at a public hearing, and (2) reinstatement and back pay is not always ordered in cases finding violation of procedural due process and ordering posttermination hearings with respect to nonrenewal of teacher contract; the disadvantage to the school district should be carefully

considered and an important consideration is the time lag between wrongful termination and the hearing.

Judgment affirmed; consideration of reinstatement and back pay claims deferred until after district court ruling and an appeal.

APPENDIX A

Ackerman, Gary and Rita Ackerman v. The Board of Education of the City of New York et al. [387 F.Supp. 76] (15)

Andrews, Katie Mae and Lestine Rogers v. Drew Municipal Separate School District et al. [507 F.2d 610] (24)

Andrews, Katie Mae and Lestine Rogers v. The Drew Municipal Separate School District et al. [371 F.Supp. 27] (26)

Arkansas Education Association et al v. Board of Education of the Portland, Arkansas School District et al. [446 F.2d 762] (51)

Armstead, Bernice et al v. Starkville Municipal Separate School District et al. [325 F.Supp. 560] (77)

Armstead, Bernice et al v. Starkville Municipal Separate School District et al. [461 F.2d 276] (82)

Armstead, Bernice et al v. Starkville Municipal Separate School District et al. [395 F.Supp. 304] (45)

Baker, Bettye Joe et al v. Columbus Municipal Separate School District et al. [EPD 10,165] (44)

Baker, Bettye Joe et al v. Columbus Municipal Separate School District et al. [329 F.Supp. 706] (78)

Barnes, Ether L. v. Jones County School District et al. [544 F.2d 804] (74)

Bravo, Susan A. v. Board of Education of the City of Chicago. [345 F.Supp. 155] (7)

Brown, Barbara Jean v. Robert Bathke. [588 F.2d 566] (25)

Cain, Virginia v. Robert McQueen et al. [588 F.2d 1001] (91)

Cannady, Annis J. v. Person County Board of Education et al. [375 F.Supp. 689] (89)

Chambers, Eddie v. Omaha Public School District et al. [536 F.2d 222] (53)

Clark, Irma et al v. Lon Mann et al. [562 F.2d 1104] (55)

Cleveland Board of Education et al v. LaFleur et al. [414 U.S. 632] (12)

Cohen, Helen A. v. Illinois Institute of Technology. [524 F.2d 818] (40)

Cohen, Mrs. Susan v. Chesterfield County School Board and Dr. Robert F. Kelly. [326 F.Supp. 1159] (5)

Cohen, Susan v. Chesterfield County School Board and Dr. Robert F. Kelly. [394 F.2d 395] (23)

Cross, Othello v. The Board of Education of the Dollarway, Arkansas School District, et al. [395 F.Supp. 531] (47)

deLaurier, Karen v. The San Diego Unified School District and Lester G. Warrenbrock. [588 F.2d 674] (11)

Demkowicz, Sharon v. Joseph Endry et al. [411 F.Supp. 1184] (19)

Equal Employment Opportunity Commission v. Mississippi College. [451 F.Supp. 564] (34)

Equal Employment Opportunity Commission et al v. Tufts Institution of Learning. [421 F.Supp. 152] (39)

Farris, Anne v. Board of Education of the City of St. Louis. [417 F.Supp. 202] (9)

Farris, Anne v. Board of Education of the City of St. Louis. [576 F.2d 764] (10)

Franklin, Mary A. v. County School Board of Giles County et al. [242 F.Supp. 371] (59)

Franklin, Mary A. et al v. County School Board of Giles County et al. [360 F.2d 324] (65)

Georgia Association of Educators, Inc. et al v. Jack P. Nix. [407 F.Supp. 1102] (79)

Glover, D.F. v. Harold T. Daniel et al. [434 F.2d 617] (50)

Green, Priscilla B. v. Waterford Board of Education et al. [349 F.Supp. 687] (6)

Green, Priscilla B. v. Waterford Board of Education et al. [473 F.2d 629] (22)

Grossman, Paula v. Bernards Township Board of Education. [EPD 10,686] (28)

Gurmankin, Judith v. Matthew Costanzo et al. [411 F.Supp. 982] (85)

Hardy, Joseph v. Leon L. Porter et al. [443 F.Supp. 1164] (64)

Harkless, Mildred et al. v. The Sweeny Independent School District of Sweeny, Texas, et al.]554 F.2d 1352] (84)

Harrington, Jeanne v. Vandalia-Butler Board of Education. [418 F.Supp. 603] (31)

Harrington, Jeanne v. Vandalia-Butler Board of Education. [585 F.2d 192] (36)

Hazelwood School District et al v. United States. [433 F.2d 299] (57)

Heath, Carol v. Westerville Board of Education et al. [345 F.Supp. 501] (18)

Hutchinson, Barbara R. v. Lake Oswego School District. [374 F.Supp 1056] (14)

Hutchinson, Barbara R. v. Lake Oswego School District No. 7 et al. [519 F2d 960] (17)

Jackson, Ceiners et al v. Marvell School District No. 22 et al. [389 F.2d 740] (66)

Jackson, L. R. and Mittie Jackson v. Wheatly School District No. 28 of St. Francis County, Arkansas et al. [489 F.2d 608] (90)

James, Nathaniel et al v. The Beaufort County Board of Education. [348 F.Supp. 711] (61)

Johnson, Dr. Sharon v. University of Pittsburgh et al. [359 F.Supp. 1002] (37)

Katz, Jacquelyn v. School District of Clayton, Missouri. [557 F.2d 153] (33)

Keglar, Robert Clark and Elbert S. Burten v. East Tallachtchie School District et al. [378 F.Supp. 1269] (62)

Kelly, Natherlean G. v. West Baton Rouge Parish School Board et al. [517 F.2d 194] (72)

Kunda, Connie Rae v. Muhlenberg College. [463 F.Supp. 294] (43)

LaFleur, Jo Carol v. Cleveland Board of Education et al. [326 F.Supp. 1208] (4)

Lee, Anthony T. et al v. Russel County Board of Education et al. [563 F.2d 1158] (76)

Lee, Anthony T. et al v. Macon County Board of Education et al. [453 F.2d 1104] (70)

McBeth, James Roy et al v. The Board of Education of the DeVall's Bluff School District No. 1 et al. [300 F.Supp. 1270] (60)

McCormick, Earlean v. Attala County Board of Education et al. [424 F.Supp. 1382] (63)

McCormick, Earlean v. Attala County Board of Education et al. [424 F.Supp. 1382] (87)

Meier, Diane v. Evansville-Vanderburgh School Corporation. [416 F.Supp. 748] (30)

Monell et al v. Department of Social Services of the City of New York et al. [436 U.S. 658] (13)

Morgan, Tallulah et al v. John J. Kerrigan et al. [530 F.2d 431] (73)

Morris, Margo L. v. The Board of Education of the Laurel School District et al. [401 F.Supp. 188] (88)

North Carolina Teachers Association and Gaines W.H. Price v. The Asheboro City Board of Education. [393 F. 2d 736] (67)

Oliver, Pat et al v. The Moberly Missouri School District. [427 F.Supp. 82] (86)

Pendrell, Nan v. Chatham College. [370 F.Supp. 494] (38)

Rackin, Phyllis v. The University of Pennsylvania et al. [386 F.Supp. 992] (29)

Reilly, Patricia M. v. Board of Education, Common School District 14, New Berlin, Wisconsin et al. [458 F.Supp. 992] (35)

Reynolds, Cornell v. Abbeville County School District No. 60, et al. [554 F.2d 638] (75)

Rolfe, Mrs. Elvira S. et al v. County Board of Education of Lincoln County Tennessee et al. [391 F.2d 77] (68)

Scott, Nolvert P. v. The University of Delaware et al. [455 F.Supp. 1102] (49)

Seaman, Margo v. Spring Lake Park Independent School District No. 16 et al. [387 F.Supp. 1168] (8)

Shirley, Barbara Lee v. Chagrin Falls Exempted Village Schools Board of Education et al. [521 F.2d 1329] (21)

Somers, Inez B. v. Aldine Independent School District. [464 F.Supp. 900] (20)

Sparks, Ira Mae et al v. Merritt Griffin et al. [460 F.2d 432] (52)

Sweeney, Christine M. v. Board of Trustees of Keene State College et al. [569 F.2d 168] (42)

Tawney, Janice v. The Board of Education of the County of Boone. [426 F.Supp. 528] (16)

Thompson, Bennie G. et al v. Madison County Board of Education et al. [496 F.2d 682] (71)

United States of America v. Hazewood School District et al. [534 F.2d 306] (54)

United States of America v. School Board of the City of Suffolk et al. [418 F.Supp. 639] (80)

United States of America v. School District 151 of Cook County, Illinois et al. [404 F.2d 1125] (69)

United States of America et al v. State of South Carolina et al. [445 F.Supp. 1094] (81)

United States of America v. Wattsburg Area School District et al. [429 F.Supp. 1370] (32)

Walston, Syvalius, Jr. et al v. County School Board of Nansemond County, Virginia et al. [492 F.2d 920] (83)

Wagner, Jean K. v. Long Island University et al. [419 F.Supp. 618] (41)

Wardlaw, Harriet v. Austin Independent School District et al. [EPD 10,222] (27)

Webster, Douglas Warren v. James F. Redmond et al. [443 F.Supp. 670] (48)

Williams, Herbert et al v. Robert Anderson et al. [562 F.2d 1080] (56)

Wright, Mrs. Vella and Miss Saora Meyers v. Houston Independent School District et al. [393 F.Supp. 1149] (46)

APPENDIX B

Al-Hamdani, Dr. Betty v. State University of New York, 438 F.Supp. 299.

Ayers, Henry B. et al v. Western Line Consolidated School District et al, 555 F.2d 1309.

Barnes, Ether L. v. Jones County School District et al, 544 F.2d 804.

Barnes, Ether L. v. Jones County School District et al, 575 F.2d 490.

Bonner, Winfred H. v. The Texas City Independent School District of Texas City, Texas et al, 305 F.Supp. 600.

Braden, Dr. Ina v. University of Pittsburgh and Wesley W. Posvar, 477 F2d. 1.

Braden, Dr. Ina v. University of Pittsburgh and Wesley W. Posvar, 392 F.Supp. 118.

Braden, Dr. Ina v. The University of Pittsburgh and Wesley W. Posvar, 552 F.2d 948.

Bradshaw, LaVerne M. v. Board of Education, 13 EPD P11,287.

Brooks, Naomi et al v. School District of City of Moberly, Missouri, 267 F.2d 733.

Brown, Barbara Jean v. Robert Bathke, 588 F.2d 634.

Buck, Ruth E. v. Board of Education of City of New York, 10 EPD P10,363.

Buford, Arthur Baglis et al v. Morgantown City Board of Education, 244 F.Supp. 437.

Chambers, Grace et al v. Hendersonville City Board of Education, 245 F.Supp. 759.

Chance, Boston M. and Louis C. Mercado et al v. Board of Examiners, 561 F.2d 1079.

Chavez, Priscilla E. v. Temple Union High School District #213, 565 F.2d 1087.

Cohen, Susan v. Chesterfield County School Board et al, 5 EPD P7967.

Cook et al v. Davis, 178 F.2d 595.

Cookson, Emogene H. v. Lewistown School District #1 et al, 351 F.Supp. 983.

Curran, Carole B. v. Portland Superintending School Committee, City of Portland, Maine, et al, 435 F.Supp. 1063.

Cussler v. The University of Maryland, 15 FEP Cases 1026.

Eckroth, Alice C. v. Flasher Public School District No. 39, 436 F.Supp. 942.

Eddington, Nadine v. District R-III, St. Francois County Reorganized School District of Flat River, Missouri, 438 F.Supp. 1195.

Flucker, Jane J. v. Fox Chapel Area School District, 461 F.Supp. 1203.

Gay, Mary Helen and Betty Jo Joyce v. Henry Wheeler et al, 6 EPD P8873.

Gonzalez, Raul v. Albert Shanker et al, 399 F.Supp. 858.

Gossin, Margaret Ann et al v. Robert L. Huskey et al, 348 F.Supp. 689.

Griffin, John D. v. J. O. Lancaster et al, 400 F.Supp. 421.

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